

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8072

10355 HOUSE LABOR & COMMERCE

200



Alaska Ear Nose & Throat

William R. Fell, MD
Jerome List, DDS, MD
Deborah Kiley, ANP

Tel: (907) 261-3096
Fax: (907) 261-3094
www.alaskaENT.com

March 30, 2001

The Honorable Pete Kelly
Co-Chairman Senate Finance Committee
State Capitol Building
Juneau, Alaska 99801

Re: SB37 - Physician Negotiation Bill

Dear Senator Kelly:

I am a private practice physician in Anchorage, Alaska. I am writing to ask you and your Senate colleagues support to pass SB37 into law. I feel that passage of the Physician Negotiation Bill will allow myself and my colleagues to be more effective advocates for patients, when dealing with third party payors.

As you know, without passage of the bill, Alaska physicians are currently barred from collectively discussing a host of issues with third party payors, which affects patient care both directly and indirectly. SB37 would allow groups of independent physicians to negotiate with health benefit plans, as long as there is "active state oversight" of the process. It should be noted that all negotiations are voluntary, and any party can withdraw at any time.

Finally, the Alaska Attorney General has veto power over the final contracts, including the fee schedule. This veto power should go a long way toward ameliorating the concerns of those who claim the passage of this bill will simply allow physicians to "ratchet up the cost of medicine."

I've been told that the bill is up for a Senate floor vote on Monday, April 2nd or Tuesday, April 3rd, 2001. Again I respectfully ask for your support of the vote.

Respectfully,

Jerome List, DDS, MD

JOHN M. TROXEL, M.D.
DIPLOMATE AMERICAN BOARD OF PLASTIC SURGERY

3340 PROVIDENCE DRIVE
SUITE #359
ANCHORAGE, AK 99508

TEL: 907-562-6886
FAX: 907-562-1021
drjohn@gci.net

March 30, 2001

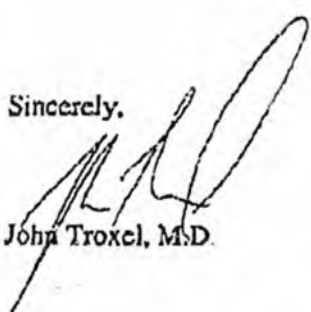
The Honorable Pete Kelly
Co-Chairman Senate Finance Committee
State Capitol Building
Juneau, AK 99801

Re: SB37 - Physician Negotiation Bill

Dear Senator Kelly,

I am a physician in private practice in Anchorage, Alaska. I am writing to ask for your support and that of your colleagues on SB37. Currently physicians barred from discussing a whole host of issues with third party payors, which directly and indirectly affect patient care. Given the oversight and voluntary participation in the negotiations, I don't think that passage of the bill will increase the cost of medicine. Thank you for your consideration.

Sincerely,


John Troxel, M.D.



OPHTHALMIC ASSOCIATES
A PROFESSIONAL CORPORATION

542 WEST SECOND AVENUE
ANCHORAGE, ALASKA 99501-2242
TELEPHONE (907) 278-1817
FAX (907) 278-1708

835 E. WESTPOINT DR., SUITE 207
WASILLA, ALASKA 99654-7143
TELEPHONE (907) 373-0225
FAX (907) 373-7776

CORDOVA (907) 278-1617
KODIAK (907) 488-4798

March 30, 2001

The Honorable Pete Kelly
Co-Chairman Senate Finance Committee
State Capitol Building
Juneau, Alaska 99801

Re: SB37 - Physician Negotiation Bill

Dear Senator Kelly:

I am a private practice physician in Anchorage, Alaska. I am writing to ask for your and your Senate colleagues support to pass SB37 into law. I feel that passage of the Physician Negotiation Bill will allow me and my colleagues to be better advocates for patients when dealing with third party payors over contracting issues.

As you know, without passage of the bill Alaska physicians are currently barred from collectively discussing a host of issues with third party payors, which directly and indirectly affect patient care. SB37 would allow groups of independent physicians to negotiate with health benefit plans; so long as there is "active state oversight" of the process. It should be noted that all negotiations are voluntary, and any party can withdraw at any time.

And finally, the Alaska Attorney General has veto power over the final contracts, including the fee schedule. This veto power should go a long way toward ameliorating the concerns of those who claim that passage of this bill will simply allow physicians to ratchet up the cost of medicine.

I've been told that the bill is up for a Senate floor vote on Monday, April 2nd or Tuesday, April 3rd, and again ask for you and your colleague's support of the vote.

Sincerely,

 - M.D.

EDUARDO CROUCH, M.D. F.A.C.S.
CATARACTS/REFRACTIVE SURGERY
GENERAL OPHTHALMOLOGY

ROBERT W. ARNO, D.M.D.
NEURORITIC/OPHTHALMOLOGY
GLAUCOMA/SURGERY

AMARON STERNBERG, O.D., F.A.A.C.
CONTACT LENS/SPECIAL TESTING
GENERAL EXAMINATIONS

CARL E. ROSEN, M.D.
OPHTHALMOPLASTIC SURGERY
ARTIFICIAL INTRAOCULAR LENSES

SCOTT A. LIMSTROM, M.D.
CORRECTIVE LENS/SURGERY

LYNN J. COON, O.D., F.A.A.C.
CONTACT LENS/CHILD CONTACT LENS

WILLIAM C. COMPTON, MD
KENNETH A. MORHAIN, MD
NATALIA SAPRYKINA, MD
HEIDI J. HURLBY, ANP
JENNIFER BZOWY, ANP
3340 PROVIDENCE DRIVE - SUITE 457
ANCHORAGE, ALASKA 99508
Telephone 561 1594 Fax 561-2539

April 2, 2001

The Honorable Pete Kelly
Co-Chairman Senate Finance Committee
Alaska State Capitol Building
Juneau, Alaska 99801-1182

Re. SB37-Physician Negotiation Bill

Dear Senator Kelly

I am a private practice physician in Anchorage, Alaska. I am writing to request your support and that of your Senate colleagues in order to pass SB37 into law. I strongly feel that passage of the Physician Negotiation Bill will allow me, and my colleagues, to be better advocates for patients when dealing with third party payers over contracting issues.

SB37 will allow groups of independent physicians to negotiate with health benefit plans as long as there is "active state oversight" of the process. Without passage of the bill Alaska physicians are currently barred from collectively discussing a host of issues with third party payers which affects patient care both directly and indirectly. All negotiations are voluntary, so it should be noted that any party may withdraw at any time.

The Alaska Attorney General has veto power over the final contracts, including fee schedules. This veto power should help alleviate the concerns of those who claim that passage of this bill will simply allow physicians to increase the cost of medicine.

I understand that the bill is up for a Senate floor vote on Monday April 2nd or Tuesday April 3rd, and again I ask for your support and that of your colleagues.

Sincerely,



William C. Compton, MD



Summit
Family
Practice

1200 Airport Heights Drive, Suite 278
Anchorage, Alaska 99508
Telephone: 907-272-3366

March 29, 2001

The Honorable Pete Kelly
Co-Chairman Senate Finance Committee
State Capital Building
Juneau, AK 99801

Re: SB37-Physician Negotiation Bill

Dear Senator Kelly:

I am a family physician in private practice in Anchorage, Alaska. I am writing to ask you and your Senate colleagues to support the passage of SB37 into law. I feel that passage of the Physician Negotiation Bill will allow me and my colleagues to be better advocates for our patients when dealing with third party payors over contracting issues.

As you know, without passage of the bill Alaskan physicians are currently barred from collectively discussing a host of issues with third party payors, which directly and indirectly affect patient care. SB37 would allow groups of independent physicians to negotiate with health benefit plans, so long there is "active state oversight" of the process. It should be noted that all negotiations are voluntary, and any party can withdraw at any time.

I understand that the Alaska Attorney General has veto power over the final contracts, which should reassure those who claim that passage of this bill will simply allow physicians to ratchet up the cost of medicine.

I've been told that the bill is up for a Senate floor vote on Monday, April 2nd or Tuesday, April 3rd, and again ask for you and your colleague's support of the vote.

Sincerely,

S. Lynn Hornbein, MD

S. Lynn Hornbein, MD
Jeffrey W. Russell, PA-C

Obstetrics and Gynecology

March 29, 2001

The Honorable Pete Kelly
Co-Chairman Senate Finance Committee
State Capitol Building
Juneau, AK 99801

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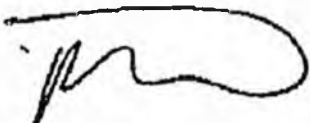
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As you know, without passage of the bill Alaska physicians are currently barred from collectively discussing a host of issues with third party payors, which directly and indirectly affect patient care. SB37 would allow groups of independent physicians to negotiate with health benefit plans; so long there is "active state oversight" of the process. It should be noted that all negotiations are voluntary, and any party can withdraw at any time.

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Sincerely,



Providence Anchorage Anesthesia Medical Group, P.C.

3300 Providence Drive, Suite 207
Anchorage, AK 99508-4619
(907) 561-0005 • FAX (907) 563-9140

April 11, 2001

Representative Lisa Murkowski
Chair-House Labor and Commerce Committee
State Capitol Building
Juneau, AK 99801

RE: SB37 – Physician Negotiation Bill

Dear Representative Murkowski:

I am a private practice physician in Anchorage, Alaska. I have been informed that SB37 has passed the Senate, (13-6) and is currently before your committee in the House. As you know the legislative session is fast approaching its conclusion. Before the House has an opportunity to vote on the bill, SB37 has three committee referrals, the first of which is before your committee. I am respectfully requesting that you bring the bill up for consideration at the earliest possible opportunity.

Without passage of the bill, Alaska physicians are currently barred from collectively discussing a host of issues with third party payers, which directly and indirectly affect patient care. SB37 would allow groups of independent physicians to negotiate with health benefit plans as long as there is "active state oversight" of the process. It should be noted that all negotiations are voluntary, and any party can withdraw at any time.

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Getting SB37 to this point has involved a great deal of compromise on the part of the physician community, and has taken the better part of two years. I sincerely hope that you and your House colleagues do whatever you can to expedite passage of this important bill.

Sincerely,



Michael Norman, M.D.

Providence Anchorage Anesthesia Medical Group, P.C.

3300 Providence Drive, Suite 207
Anchorage, AK 99508-4619
(907) 561-0005 • FAX (907) 563-9140

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Chair-House Labor and Commerce Committee
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Sincerely,



Robert Pease, M.D.

Providence Anchorage Anesthesia Medical Group, P.C.

3306 Providence Drive, Suite 207
Anchorage, AK 99508-4619
(907) 561-0005 • FAX (907) 563-9140

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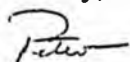
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Peter Jensen, M.D.

Providence Anchorage Anesthesia Medical Group, P.C.

3300 Providence Drive, Suite 207
Anchorage, AK 99508-4619
(907) 561-0005 • FAX (907) 563-9140

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Sincerely,



Steven Rosenfield, M.D.

Providence Anchorage Anesthesia Medical Group, P.C.

3300 Providence Drive, Suite 207
Anchorage, AK 99508-4619
(907) 561-0005 • FAX (907) 563-9140

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Sincerely,



Finn Lunoe, M.D.

Providence Anchorage Anesthesia Medical Group, P.C.

3300 Providence Drive, Suite 207
Anchorage, AK 99508-4619
(907) 561-0005 • FAX (907) 563-9140

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Sincerely



Mark Barnett, M.D.



F. LELAND JONES, M.D.
KENNETH S. LAUFER, M.D.
R. MATISON WHITE, JR., M.D.
RICHARD R. TAYLOR JR., M.D.
CHARLES L. AARONS, M.D.

GLENN J. SCHULTES, M.D.
GARY L. CHILD, D.O.
TIMOTHY COALWELL, M.D.
MARIO A. LANZA, M.D.
MICHELE A. CHASE, M.D.
DARREN B. LEWIS, M.D.

Diplomates American Board of Family Practice

2211 EAST NORTHERN LIGHTS BOULEVARD, ANCHORAGE ALASKA 99508

April 11, 2001

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Chair-House Labor & Commerce Committee
State Capitol Building
Juneau, AK 99801

Re: SB37 - Physician Negotiation Bill

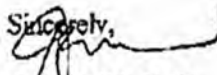
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Getting SB37 to this point has involved a great deal of compromise on the part of the physician community and has taken the better part of two years. I sincerely hope you and your house colleagues do whatever you can do to expedite passage of this important bill.

Sincerely,

Gary Child, D. O.

PHONE (907) 279-8486 • FAX (907) 278-7255 (UPSTAIRS) • FAX (907) 257-8180 (DOWNSTAIRS)



Prompt, Thorough, Concerned

Diplomates American Board of Family Practice

F. LELAND JONES, M.D.
KENNETH S. LAUFER, M.D.
R. MATSON W. ITE, JR., M.D.
RICHARD R. TAYLOR JR., M.D.
CHARLES L. AARONS, M.D.

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2211 EAST NORTHERN LIGHTS BOULEVARD, ANCHORAGE ALASKA 99508

April 11, 2001

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Chair-House Labor & Commerce Committee
State Capitol Building
Juneau, AK 99801

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Sincerely,


Charles Aaronson, M.D.

PHONE (907) 279-8486 • FAX (907) 278-7255 (UPSTAIRS) • FAX (907) 257-8180 (DOWNSTAIRS);



F. LELAND JONES, M.D.
 KENNETH S. LAUFER, M.D.
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Sincerely,


 Darren Lewis, M.D.

PHONE (907) 279-8486 • FAX (907) 278-7255 (UPSTAIRS) • FAX (907) 267-8180 (DOWNSTAIRS)



"Prompt, Thorough, Concerned"

F. LELAND JONES, M.D.
KENNETH S. LAUFER, M.D.
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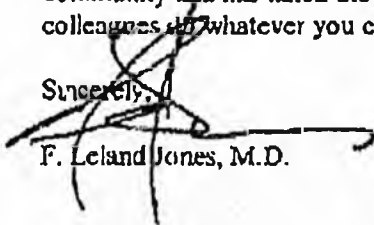
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Sincerely,


F. Leland Jones, M.D.

PHONE (907) 279-8486 • FAX (907) 278-7265 (UPSTAIRS) • FAX (907) 257-8180 (DOWNSTAIRS)



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Getting SB37 to this point has involved a great deal of compromise on the part of the physician community and has taken the better part of two years. I sincerely hope you and your house colleagues do whatever you can do to expedite passage of this important bill.

Sincerely,

Glenn Schultes, M.D.

PHONE (907) 279-8486 • FAX (907) 278-7255 (UPSTAIRS) • FAX (907) 257-8180 (DOWNSTAIRS)



F. LELAND JONES, M.D.
 KENNETH S. LAUFER, M.D.
 R. MATSON WHITE, JR., M.D.
 RICHARD R. TAYLOR JR., M.D.
 CHARLES L. AARONS, M.D.

GLENN J. SCHULTES, M.D.
 GARY L. CHILD, D.O.
 TIMOTHY COALWELL, M.D.
 MARIO A. LANZA, M.D.
 MICHELE A. CHASE, M.D.
 DARREN D. LEWIS, M.D.

"Thorough, Thorough, Concerned"

Diplomates American Board of Family Practice

2211 EAST NORTHERN LIGHTS BOULEVARD, ANCHORAGE ALASKA 99508

April 11, 2001

Representative Lisa Murkowski
 Chair-House Labor & Commerce Committee
 State Capitol Building
 Juneau, AK 99801

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Mario Lanza, M.D.

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Dale I. Webb, MD
Melissa Corcoran, MD, Ph.D
Dennis Beckworth, MD
Nancy Schmetzer, ANP
Beth Conklin, ANP



Katmai Oncology Group

3260 Providence, Suite 526
Anchorage, Alaska 99508-4627
(907) 562-0321
(907) 562-2683 FAX

April 11, 2001

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Chair - House Labor & Commerce Committee
State Capitol Building
Juneau, AK 99801

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Dale I Webb, MD

ROBERT W. BUNDTZEN, M.D., F.A.C.P.
INTERNAL MEDICINE and INFECTIOUS DISEASES

April 10, 2001

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Chair- House Labor & Commerce Committee
State Capitol Building
Juneau, AK 99801

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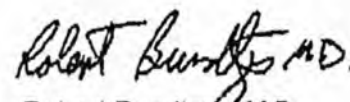
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Sincerely,



Robert Bundtzen, M.D.

4120 Laurel St., Suite 204 Anchorage, Alaska 99508
Ph: 907-561-4362 Fax: 907-563-4498

JOHN C. MUES, M.D., F.A.C.P.
INTERNAL MEDICINE

April 10, 2001

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Chair- House Labor & Commerce Committee
State Capitol Building
Juneau, AK 99601

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John C. Mues, M.D.

4120 Laurel St., Suite 204 Anchorage, Alaska 99508
Ph: 907-561-4362 Fax: 907-563-4498

Stephan P. Hyams, D.O.,L.L.C.

Board Certified General Surgeon

April 10, 2001

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Chair - House Labor & Commerce Committee
State Capitol Building
Juneau, AK 99801

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Sincerely,


Stephan P. Hyams, D.O.

Geneva Woods Ear, Nose, and Throat Associates, Inc.

FACIAL PLASTIC AND RECONSTRUCTIVE SURGERY

J. DAVID WILLIAMS, M.D.
DONALD K. ENDRES, M.D.
RICKY D. STARJWAT, PA-C

3700 RHONE CIRCLE, SUITE 203
ANCHORAGE, ALASKA 99508
TELEPHONE: (907) 562-3313
FAX: (907) 562-0425

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Chair-House Labor and Commerce Committee
State Capitol Building
Juneau, AK 99801

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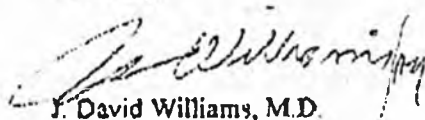
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Sincerely,



J. David Williams, M.D.
JDW/ag

Richard L. Neubauer MD, FACP
1200 Airport Heights Dr. Suite 210
Anchorage, Alaska 99508-2952
Telephone 907-264-2030
Fax 907-276-0366

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State Capitol Building
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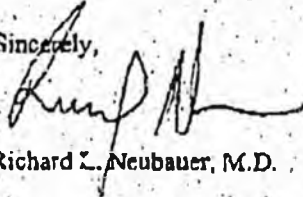
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Richard L. Neubauer, M.D.

jo

Sherman Beacham, M.D.
1200 Airport Heights Drive, Suite 210
Anchorage, Alaska 99508
(907) 264-2030/FAX (907) 276-0366

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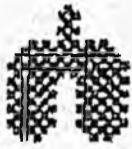
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Sherman Beacham, M.D.

jo



Norman J. Wilder, MD
Pulmonary Disease & Aviation Medicine

Fellow, American College of Physicians (FACP)
Fellow, American College of Chest Physicians (FCCP)
Diplomate, American Board of Internal Medicine in
Internal Medicine and Pulmonary Disease

1200 Airport Heights Drive, Suite 210
Anchorage, AK 99508-2952
Tel: (907) 264-2030 Fax: 276-0366
E-mail: wilder@alaska.net

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Norman J. Wilder, MD, FACP, FCCP

jo

Steven B. Tucker, M.D., F.A.C.P.
NEPHROLOGY

Suite 304, 3300 Providence Drive, Anchorage, Alaska 99508
Telephone: 907-261-4840
Fax: 907-261-4820
email: sbtucker@alaska.net

April 10, 2001

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Chair- House Labor & Commerce Committee
State Capitol Building
Juneau, AK 99801

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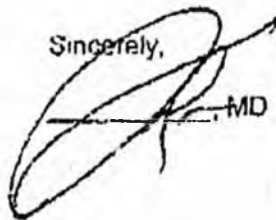
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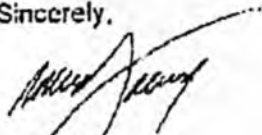

MD

Representative Lisa Murkowski
Re: SB 37 - Physician Negotiation Bill
April 10, 2001
Page 2

It has been a two year struggle getting this Bill to its present status. I would respectfully request that your committee hear this Bill in a prompt fashion so that this does not get drug out to a third year before a vote of the entire legislature can be taken.

Thank you for your consideration concerning this Bill.

Sincerely,



Roland E. Gower, MD
Chairman of the Board
Alaska Physicians & Surgeons

REG/eas

Roland E. Gower, M.D.

A PROFESSIONAL CORP
 3441 DE BAHR RD #21
 ANCHORAGE ALASKA 99508
 907-279-3844

PHYSICIAN LIMITED TO GENERAL SURGERY

BY APPOINTMENT ONLY

April 10, 2001

Representative Lisa Murkowski
 Chair, House Labor and Commerce Committee
 State Capitol Building
 Juneau, AK 99801

Re: SB 37 – Physician Negotiation Bill

Dear Representative Murkowski:

I am a surgeon who has practiced in Anchorage since 1975. I am writing you in support of Senate Bill 37, which I understand is currently assigned to your committee. I am aware of the time constraints facing this session of the legislature and am writing to respectfully ask you to hear this Bill as soon as possible in your committee.

Alaska physicians are currently prohibited from discussing collectively almost any issue that has to do with third-party payers by federal antitrust laws. If Senate Bill 37 were passed it would allow healthcare providers to collectively talk with insurance companies about contractual issues concerning not only fees but issues that directly affect the delivery of health care. However, Senate Bill 37 would only allow this with "active state oversight." Also, the Bill allows voluntary withdrawal from negotiations at any time by either party. The physician community is in favor of this Bill. I would request that your committee address the question of why the insurance industry is against it if it is strictly voluntary. Two or three companies write the overwhelming majority of the policies in Alaska and currently deal with physicians or small physician groups on an individual basis. I ask you to consider why they reject legislation that allows voluntary discussions with physicians collectively when they can walk away from the table at any time.

I would also point out that the Attorney General of Alaska has veto power over final contracts including fee schedules. I personally question those who claim that the passage of this Bill will drive up the cost of medical care delivery. I feel the real issue is that insurance companies do not want doctors involved in deciding things like what defines a "medical emergency," or "medical necessity," and other issues that can be written in the contract that involve good patient care.



Dwight M. Ellerbe, MD

Facial Plastic & Reconstructive Surgery
Pediatric and Adult Otolaryngology

Diplomate:
American Board of Facial Plastic
and Reconstructive Surgery

American Board of
Otolaryngology/Head and Neck
Surgery

American Board of Pediatrics

April 11, 2001

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Dwight M. Ellerbe, MD

2841 DeBarr Road, Suite 43 • Anchorage, Alaska 99508
907-279-8800 Fax 907-279-8810

JOHN B. DEKEYSER, M.D., P.C.
Obstetrics & Gynecology

Alaska Medical Plaza
1200 Airport Heights Drive, #280A
Anchorage, Alaska 99508-2955
(907) 264-2317 (800) 818-2229
Fax (907) 264-2320

April 12, 2001

**Representative Lisa Murkowski
Chair- House Labor and Finance Committee
State Capitol Building
Juneau, AK 99801**

Re: SB37-Physician Negotiation Bill

Dear Representative Murkowski:

I am writing to ask your favorable consideration on SB-37. The way I see this bill, it will help to level the playing field where the players are individual physicians and the insurance companies and the referee is the attorney general. Considerable time and effort has already been put into this bill and I want to thank you in advance for your effort and that of your committee.

Sincerely,


John DeKeyser, M.D.

P.S.: Hi Lisa. I hope all is going well for you, Vern & the kids. Thanks for all your hard work in Juneau.

Primary Care Associates

3506 LAUREL DR, SUITE 100
ANCHORAGE, AK 995
PHONE: (907) 562-1734
FAX (907) 561-8530

10928 EAGLE RIVER ROAD, SUITE 150
EAGLE RIVER, AK 99577
PHONE: (907) 696-7223
FAX (907) 696-5123

BRUCE J. KJESSENG, MD
STANLEY N. SMITH, MD
MARY ANNE POLAND, MD
LAWRENCE J. SMITH, MD

JANE E. SIMONO, MD
ERIC J. MIXNICH, MD
MILLIE J. PAC
KRISTA ROSCOE, FNP

April 12, 2001

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Chair House Labor and Commerce Committee
State Capitol Building
Juneau, Alaska 99801

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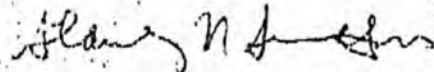
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Stanley N. Smith, MD
SNS/hisi

04/13/01

10:21

ALASKA REHABILITATION MEDICINE + 9075617704

NO.554 001

907 345 8637

FROM : SMB Documents

FAX NO. : 907 345 8637

Apr. 13 2001 07:49AM P1

Alaska Rehabilitation Medicine, Inc.

A PROFESSIONAL CORPORATION
Physical Medicine and Rehabilitation
Electrodiagnosis

Shawn Hadley, M.D.* ** • Joella Beard, M.D.* • Clyde Bullion, PA-C
*Diplomate, American Board of Physical Medicine and Rehabilitation
**Diplomate, American Board of Electrodiagnostic Medicine

April 11, 2001

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House Labor and Commerce Committee
State Capitol Building
Juneau, Alaska 99801

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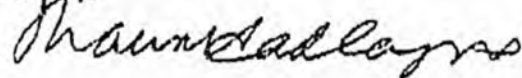
I have been a private practice physician in Anchorage since 1984. I am aware that SB 37 has passed the Senate by a wide margin and is currently in your committee. I feel I am representative of a number of private practice physicians requesting consideration of this bill as soon as possible.

As you know, SB 37 would allow independent physicians to negotiate in groups with health benefit plans. This allows us as individual physicians to help "level the playing field" when we are dealing with large corporate health insurance companies. It is my understanding that there are provisions in this bill to provide state oversight of the process to avoid potential abuses of the process.

Having practiced in Anchorage since 1984, I have seen my costs of doing business continually rise. This is true in all areas relating to my practice. The current difficulty is in recruiting and retaining office staff, both professional and clerical, and it is important that physicians be able to deal fairly with these large entities to make sure that we are able to continue to provide the excellent quality of care for which we are known in this state.

Getting SB 37 to this point in the legislative process has involved considerable work on the part of many parties over the past two years. I encourage you and your colleagues in the State House to do whatever you can to expedite passage of this bill important to private practice providers "in the trenches."

Sincerely,



Shawn Hadley, M.D.

SH:smb

3300 Providence Drive, Suite 01, Anchorage, Alaska 99508 • Telephone (907) 562-2600 • Fax (907) 562-2602

Judith Whitcomb, M.D.

General Surgeon
3300 Providence Drive - Suite 108
Anchorage, Alaska 99508

Telephone 543-3328
Fax 543-0236

April 12, 2001

Representative Lisa Murkowski
Chair - House Labor and Commerce Committee
State Capitol Building
Juneau, AK 99801

Re: SB37 -- Physician Negotiation Bill

Dear Representative Murkowski:

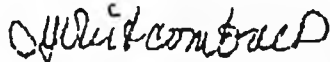
I am a private practice physician in Anchorage, Alaska. I have been informed that SB37 has passed the Senate (13-6), and is currently before your committee in the House. As you know, the legislative session is fast approaching its conclusion. Before the House has an opportunity to vote on the bill, SB37 has three committee referrals, the first of which is before your committee. I am respectfully requesting that you bring the bill up for consideration at the earliest possible opportunity.

Without passage of the bill, Alaska physicians are currently barred from collectively discussing a host of issues with third-party payors, which directly and indirectly affect patient care. SB37 would allow groups of independent physicians to negotiate with health benefit plans, so long as there is "active state oversight" of the process. It should be noted that all negotiations are *voluntary*, and any party can withdraw at any time.

In addition, the Alaska Attorney General has veto power over the final contracts, including the fee schedule. This veto power should go a long way toward ameliorating the concerns of those who claim that passage of this bill will simply allow physicians to ratchet up the cost of medicine.

Getting SB37 to this point has involved a great deal of compromise on the part of the physician community, and has taken the better part of two years. I sincerely hope you and your House colleagues do whatever you can do to expedite passage of this important bill.

Sincerely,



Judith Whitcomb, M.D.

JW/jvw

MILTON T. HUMMER, M.D.
ANESTHESIOLOGY
4215 Charing Cross Circle
Anchorage, Alaska 99504
Phone 333-9939

April 10, 2001

Representative Lisa Murkowski
Chair-House Labor & Commerce Committee
State Capitol Building
Juneau, AK 99801

Re: SB37 - Physician Negotiation Bill

Dear Representative Murkowski:

I am a private practice physician in Anchorage, Alaska. I have been informed that SB37 has passed the Senate, (13-6) and is currently before your committee in the House. As you know the legislative session is fast approaching its conclusion. Before the House has an opportunity to vote on the bill, SB37 has 3 committee referrals, the first of which is before your committee. I am respectfully requesting that you bring the bill up for consideration at the earliest possible opportunity.

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Sincerely,



Milton T. Hummer, M.D.

Thomas G. Shreves, M.D.
A Professional Corporation
Digestive Diseases and Liver Disorders
Diplomate American Board of Internal Medicine-Gastroenterology
3340 PROVIDENCE DRIVE, SUITE 358
ANCHORAGE, ALASKA 99508
(907) 261-5057
FAX (907) 261-3688

April 10, 2001

Representative Lisa Murkowski
Chair-House Labor & Commerce Committee
State Capitol Building
Juneau, AK 99801

RE: SB37 - Physician Negotiation Bill

Dear Representative Murkowski:

I am a private practice physician in Anchorage, Alaska. I have been informed that SB37 has passed the Senate, (13-6) and is currently before your committee in the House. As you know, the legislative session is fast approaching its conclusion. Before the House has an opportunity to vote on the bill, SB37 has three committee referrals, the first of which is before your committee. I am respectfully requesting that you bring the bill up for consideration at the earliest possible opportunity.

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Sincerely yours,



Thomas G. Shreves, M.D.
TGS:clb

J. Michael Carroll, M.D., P.C.
Internal Medicine, Hematology, Oncology
Fairbanks Cancer Treatment Center
1640 Cowles, Suite 1
Fairbanks, Alaska 99701-5992

Telephone: (907) 452-4768 Fax: (907) 452-1009

April 17, 2001

Sent Via Fax: 907-466-2273

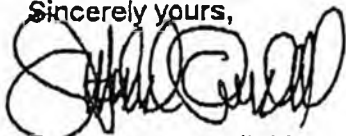
Representative Lisa Murkowski
State of Alaska
House of Representatives
Chairman of the House Labor and Commerce Committee
State Capital, Room 408
Juneau, Alaska 99801-1182

Dear Representative Murkowski:

I would hope that you would support Senate Bill 37 and expedite any committee sessions in regards to this Bill. The physicians in Fairbanks, myself included, strongly support this Bill as a means to allow physicians to impact on the non-financial health care aspects of medicine. Currently, physicians have limited ability to deal with insurance companies on issues of quality health care. This Bill permits physicians to become much more involved and, hopefully, patients will receive significant benefit. Please do not look upon this as a means for physicians to increase their charges.

Having medical professionals involved in the definition of emergency care, important preventative and screening programs, and working as a spokesman for the patient, is vitally important.

Sincerely yours,



J. Michael Carroll, MD

JMC:tpw35
38175

sarcone

sarconecnm@yahoo.com

Telephone 907-272-4047

Fax (call first)

1444 hillcrest drive
anchorage, alaska 99503

April 19, 2001
Representative Lisa Murkowski
State Capitol
Juneau, Alaska 99801-1182
907-465-2293 (Fax)

Dear Representative Murkowski:

I am writing in regard to SB 37, which has been referred to the House Labor & Commerce Committee for consideration.

The Alaska Nurses Association, The Alaska Nurse Practitioners Association, and the Alaska Chapter of the American College of Nurse-Midwives testified against this bill in the Senate Judiciary and Labor & Commerce Committees. While we oppose this bill at a fundamental level, the CS which emerged from the Labor & Commerce committee was a version we felt we could live with.

It was then referred to Senate Finance where some changes were made that we feel adversely affect our interests. First of all the review process contained in CSSB 37(FIN), Sec.23.50.020(i), Page 6, Lines 10-16 is, in our opinion, not sufficient. We would like, at a minimum, the language from CSSB37(L&C), Sec.23.50.020(g), Page6, Lines 2-9 reinstated. The language in the L&C version provides for review and comment by interested parties. It further specifies that the Attorney General must include a review of any harm to consumers or non physician providers that might be contained in any contract.

The sunset clause that was initially included in this bill was also deleted at the 6:00 PM Senate Finance Committee meeting on 3/28/01, where no testimony was taken. We would like the sunset clause reinstated. Fundamentally, we would like this bill to disappear. Barring that, we would like language that protects our interests and we would like a sunset clause so that we are guaranteed the opportunity to revisit this bill after everyone has had a chance to see it in operation.

Nurse Practitioners and Nurse-Midwives provide affordable, high quality, health care. We offer a cost effective alternative for Alaskans. We compete, sometimes against all odds, with physicians. We need, at least, the protections I've described in order to remain viable in the competitive healthcare marketplace.

Thank you for your time and consideration. I look forward to hearing from you on this matter of importance to all Alaskan healthcare consumers and providers.

Sincerely,

Laura Sarcone, MS, CNM, ANP
Legislative Liason, AK Chapter of the American College of Nurse-Midwives



3600 Minnesota - Anchorage, Alaska 99503
(907) 279-3500

April 19, 2001
Representative Lisa Murkowski
State Capitol
Juneau, Alaska 99801-1182
907-465-2293 (Fax)

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Sincerely,

Katherine T. Melasin FNP



3600 Minnesota • Anchorage, Alaska 99503
(907) 279-3500

April 19, 2001
Representative Lisa Murkowski
State Capitol
Juneau, Alaska 99801-1182
907-465-2293 (Fax)

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Sincerely,


Cathy Biessel FNP
Cathy Biessel

April 19, 2001
Representative Lisa Murkowski
State Capitol
Juneau, Alaska 99801-1182
907-465-2293 (Fax)

Dear Representative Murkowski:

I am writing in regard to SB 37, which has been referred to the House Labor & Commerce Committee for consideration.

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Thank you for your time and consideration. I look forward to hearing from you on this matter of importance to all Alaskan healthcare consumers and providers.

Sincerely,

Barbara Williams

Joy Zimmerman Golden, RNC, ANP

ADVANCED NURSE PRACTITIONER-CERTIFIED

CERTIFIED

REPRODUCTIVE ENDOCRINOLOGY/INFERTILITY

April 19, 2001
Representative Lisa Murkowski
State Capitol
Juneau, Alaska 99801-1182
907-465-2293 (Fax)

Dear Representative Murkowski:

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Thank you for your time and consideration. I look forward to hearing from you on this matter of importance to all Alaskan healthcare consumers and providers.

Sincerely,



Joy Zimmerman Golden
ANP

Alaska Medical Plaza • 1200 Airport Heights Dr., Suite 180 • Anchorage, Alaska 99508 • (907) 264-2333 • Fax (907) 272-1629

SANDRA L. CLAPPER, CNM, ANP

ADVANCED NURSE PRACTITIONER - CERTIFIED
REPRODUCTIVE ENDOCRINOLOGY/INFERTILITY - CERTIFIED
NURSE - MIDWIFE - CERTIFIED

April 19, 2001
Representative Lisa Murkowski
State Capitol
Juneau, Alaska 99801-1182
907-465-2293 (Fax)

Dear Representative Murkowski:

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Thank you for your time and consideration. I look forward to hearing from you on this matter of importance to all Alaskan healthcare consumers and providers.

Sincerely,

Sandra L. Clapper





237 East Third Avenue, Suite #3
Anchorage, AK 99501
907-222-6847

April 19, 2001

Representative Lisa Murkowski
(907) 465-2293 fax

Dear Representative Murkowski,

As an elected representative of the Alaska Nurse Practitioner Association I am writing to you of our opposition to SB 37, which has been referred to the House Labor & Commerce Committee for consideration.

There are over 400 advanced nurse practitioners in Alaska. Many of us practice in rural, medically under-served areas. Some of us own our own practices and bill third party payors. In our private practices, the majority of our patients are low-income, non-insured or on Medicaid and Denali Kid Care insurance. Typically, our cost to the health care system is at least 20% less than that of physician providers.

In a worst case scenario, the passage of this bill could cause nurse practitioners to be excluded from many insurance policies. The physicians who do compete for our patient populations and who do not want to see their payments go down – rather the opposite could somehow determine our fee structure. We could see a great increase in health care costs to the patient if this bill passes as well as a decrease in access to quality health care providers.

Without the Sunset Clause which had been included originally, we will all lose the guarantee that this bill could be re-evaluated after we've seen it in operation. We desire to have this clause reinstated.

Ideally, we support the failure of the bill, which has been rejected in other US states except for Texas. As a minimum we would like a more protective review process than that contained in CSSB 37 (FIN)

Sec. 23.50.020 (I), Page 6, Lines 10-16. Also, we want the original language in CSSB 37 (L&C), Sec. 23.50.020 (g), Page 6, Lines 2-9 reinstated. This language in the L&C version provides for review and comment by interested parties, and specifies that the Attorney General must include a review of any harm to consumers or non-physician providers.

Thank you for taking the time to hear our genuine concerns. We are not a small entity. We have the support of Alaska Nurses Association and the Alaska Association of Nurse Midwives. I look forward to hearing from you on the matter of importance to all Alaskan healthcare consumers and providers.

Sincerely,

Cynthia A. Ebelacker, ANP
President, Alaska Nurse Practitioner Association

ALASKA WOMEN'S AND CHILDREN'S CLINIC

SUITE 110

11823 OLD GLENN HIGHWAY
EAGLE RIVER, AK 99577
TELEPHONE: (907) 696-2273
FAX: (907) 694-8446

April 19, 2001

Representative Lisa Murkowski
(907) 465-2293 fax

Dear Representative Murkowski,

I am writing to inform you of my opposition to SB 37, which has been referred to the House Labor & Commerce Committee for consideration.

I am a Family Nurse Practitioner in a privately owned NP practice in Eagle River. I care for mostly lower income, non-insured women, and children who qualify for Denali Kid Care (Medicaid). I provide a valuable niche for these families. My care is rich in health screening and prevention and patient education. My high quality services are cost effective for many Alaskan families. My practice may compete with other physician practices, but I also complement physician practice as I refer patients to specialists daily.

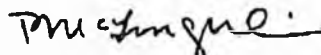
If SB 37 passes in its current form, my NP practice is threatened. Ideally, I would like for the bill to fail, but if it must pass, revisions must be made. The version which emerged from the Labor and Commerce Committee, was acceptable.

It was then referred to Senate Finance where some changes were made that nurse practitioners feel adversely affect our interests. First of all the review process contained in CSSB 37(FIN), Sec. 23.50.020 (I), Page 6, Lines 10-16 is, in our opinion, not sufficient. We would like, at a minimum, the language in from CSSB37 (L&C), Sec.23.50.020 (g), Page6, Lines 2-9 reinstated. The language in the L&C version provides for review and comment by interested parties. It further specifies that the Attorney General must include a review of any harm to consumers or non-physician providers that might be contained in any contract.

The sunset clause that was initially included in this bill was also deleted at the 6:00 p.m. Senate Finance Committee meeting on 03/28/01, where no testimony was taken. We would like the sunset clause reinstated. Fundamentally, we would like a sunset clause so that we are guaranteed the opportunity to revisit this bill after everyone has had a chance to see it in operation.

Thank you for taking the time to consider the needs of nurse practitioners in Alaska and the impact SB 37 has for our patients and us.

Sincerely,


Patricia McLoughlin, FNP

Nancy Nelson
For Mother & Child Birth Center
49 E. Corral Ave. #2
Soldona, AK 99669

April 20, 2001
Representative Lisa Murkowski
State Capitol
Juneau, Alaska 99801-1182
907-465-2293 (Fax)

Dear Representative Murkowski:

I am writing in regard to SB 37, which has been referred to the House Labor & Commerce Committee for consideration.

The Alaska Nurses Association, The Alaska Nurse Practitioners Association, and the Alaska Chapter of the American College of Nurse-Midwives testified against this bill in the Senate Judiciary and Labor & Commerce Committees. While we oppose this bill at a fundamental level, the CS which emerged from the Labor & Commerce committee was a version we felt we could live with.

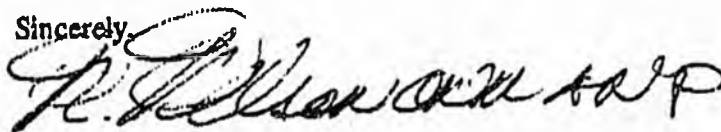
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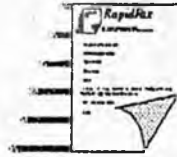
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Thank you for your time and consideration. I look forward to hearing from you on this matter of importance to all Alaskan healthcare consumers and providers.

Sincerely,



Nancy Nelson, CNM, ANP



RapidFax

*This Fax was sent using FAXcillate
The Premier Fax Software for the Apple Macintosh™*

To: The Honorable Lisa Murkowski, - Alaska House of Representatives

From: C. Carl Bostek, Aurora Health Services

Fax Phone Number: 907-563-5852

Date: Thu, Apr 19, 2001 • 10:52 PM

Transmitting (1) pages, including cover sheet.

If there is difficulty with this transmission, please call: 907-727-3710

Note:

Dear Representative Murkowski:

I am writing in regard to SB 37, which has been referred to the House Labor & Commerce Committee for consideration.

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Thank you for your time and consideration. I look forward to hearing from you on this matter of importance to all Alaskan healthcare consumers and providers.

Sincerely,

C. Carl Bostek, CRNA, FNP

April 19, 2001
Representative Lisa Murkowski
State Capitol
Juneau, Alaska 99801-1182
907-465-2293 (Fax)

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The sunset clause that was initially included in this bill was also deleted at the 6:00 PM Senate Finance Committee meeting on 3/28/01, where no testimony was taken. We would like the sunset clause reinstated. Fundamentally, we would like this bill to disappear. Barring that, we would like language that protects our interests and we would like a sunset clause so that we are guaranteed the opportunity to revisit this bill after everyone has had a chance to see it in operation.

Nurse Practitioners and Nurse-Midwives provide affordable, high quality, health care. We offer a cost effective alternative for Alaskans. We compete, sometimes against all odds, with physicians. We need, at least, the protections I've described in order to remain viable in the competitive healthcare marketplace.

Thank you for your time and consideration. I look forward to hearing from you on this matter of importance to all Alaskan healthcare consumers and providers.

Sincerely,

Roberta Wilson, SNM, RNC
3701 Eureka Street, Sp. 28B
Anchorage, AK 99503
(907) 561-4182
roberta1@gci.net



Fairbanks Clinic

Quality Care Since 1932

April 19, 2001

Representative Lisa Murkowski
State of Alaska
House of Representatives
Chair, House Labor and Commerce Committee
State Capitol, Room 408
Juneau, AK 99801-1182

Dear Representative Murkowski:

I am writing concerning SB 37, the physician joint negotiation bill. This bill has spent the past 15 months being debated in the senate and after quite a bit of "give and take", as well as hearings, it passed the senate and is now moving to the house.

I am asking that you support this bill and do what you can to hear SB 37 at the earliest possible date and move the bill expeditiously. The bill has been somewhat modified from its original form through the legislative process in the senate. It is still basically similar to its original form. We feel the bill is beneficial to the patients of Alaska and feel that it should help in "somewhat leveling the negotiation field" between doctors and third party payers.

You may recall that I met with you in January. During our meeting we discussed this bill as well as other medical issues before the house. We are very hopeful that the house can pass this bill before the end of this year's session. As you may recall, the bill does have more than adequate supervision by the State of Alaska and keep in mind that all negotiations are completely voluntary on the part of all parties. You have heard, or possibly will hear arguments that this is likely to increase the cost of medical care in the State of Alaska. We would argue this would not be the case. If anything, it would provide a forum for greater competition by both physicians and third party payers.

Please do what you can to support the bill and move it expeditiously as possible and if you have any questions whatsoever, please don't hesitate to call me. My work number is (907) 452-1761, and my home number is (907) 457-2950.

Sincerely,

A handwritten signature in dark ink, appearing to read "Peter Lawrason". The signature is written in a cursive style with some loops and flourishes.

Peter Lawrason, M.D.

President, Alaska State Medical Association

Providence Anchorage Anesthesia Medical Group, P.C.

3300 Providence Drive, Suite 207
Anchorage, AK 99508-4619
(907) 561-0005 • FAX (907) 563-9140

April 11, 2001

Representative Lisa Murkowski
Chair-House Labor and Commerce Committee
State Capitol Building
Juneau, AK 99801

RE: SB37 – Physician Negotiation Bill

Dear Representative Murkowski:

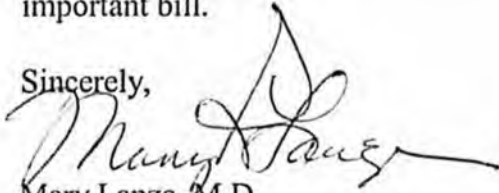
I am a private practice physician in Anchorage, Alaska. I have been informed that SB37 has passed the Senate, (13-6) and is currently before your committee in the House. As you know the legislative session is fast approaching its conclusion. Before the House has an opportunity to vote on the bill, SB37 has three committee referrals, the first of which is before your committee. I am respectfully requesting that you bring the bill up for consideration at the earliest possible opportunity.

Without passage of the bill, Alaska physicians are currently barred from collectively discussing a host of issues with third party payers, which directly and indirectly affect patient care. SB37 would allow groups of independent physicians to negotiate with health benefit plans as long as there is "active state oversight" of the process. It should be noted that all negotiations are voluntary, and any party can withdraw at any time.

In addition, the Alaska Attorney General has veto power over the final contracts including the fee schedule. This veto power should go a long way toward ameliorating the concerns of those who claim that the passage of this bill will simply allow physicians to ratchet up the cost of medicine.

Getting SB37 to this point has involved a great deal of compromise on the part of the physician community, and has taken the better part of two years. I sincerely hope that you and your House colleagues do whatever you can to expedite passage of this important bill.

Sincerely,


Mary Lanza, M.D.

GRIFFITH C. STEINER, M.D.

OPHTHALMOLOGY

3340 Providence Drive, Suite 565
Anchorage, Alaska 99508
Tel. (907) 561-1167
Fax (907) 561-7051

April 12, 2001

Representative Lisa Murkowski
Chair – House Labor and Commerce Comm.
State Capitol Building
Juneau, AK 99801

RE: SB-37 – Physician Negotiation Bill

Dear Lisa,

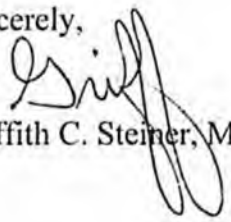
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Getting SB37 to this point has involved a great deal of compromise on the part of the physician community and has taken the better part of two years. I sincerely hope you and your House colleagues do whatever you can do to expedite passage of this important bill.

Sincerely,


Griffith C. Steiner, M. D.

*Most importantly we can collectively negotiate how we provide care so third party payors cannot dictate this to us and our patients.
Thank you!*

Alaska Rehabilitation Medicine, Inc.

A PROFESSIONAL CORPORATION
Physical Medicine and Rehabilitation
Electrodiagnosis

Shawn Hadley, M.D.* ** • Joella Beard, M.D.* • Clyde Bullion, PA-C

*Diplomate, American Board of Physical Medicine and Rehabilitation

**Diplomate, American Board of Electrodiagnostic Medicine

April 11, 2001

Representative Lisa Murkowski, Chair
House Labor and Commerce Committee
State Capitol Building
Juneau, Alaska 99801

RE: Senate Bill 37—Physician Negotiation Bill

Dear Representative Murkowski:

I have been a private practice physician in Anchorage since 1984. I am aware that SB 37 has passed the Senate by a wide margin and is currently in your committee. I feel I am representative of a number of private practice physicians requesting consideration of this bill as soon as possible.

As you know, SB 37 would allow independent physicians to negotiate in groups with health benefit plans. This allows us as individual physicians to help "level the playing field" when we are dealing with large corporate health insurance companies. It is my understanding that there are provisions in this bill to provide state oversight of the process to avoid potential abuses of the process.

Having practiced in Anchorage since 1984, I have seen my costs of doing business continually rise. This is true in all areas relating to my practice. The current difficulty is in recruiting and retaining office staff, both professional and clerical, and it is important that physicians be able to deal fairly with these large entities to make sure that we are able to continue to provide the excellent quality of care for which we are known in this state.

Getting SB 37 to this point in the legislative process has involved considerable work on the part of many parties over the past two years. I encourage you and your colleagues in the State House to do whatever you can to expedite passage of this bill important to private practice providers "in the trenches."

Sincerely,



Shawn Hadley, M.D.

SH:smb



April 11, 2001

Representative Lisa Murkowski
Chair, House Labor and Commerce Committee
State Capitol Building
Juneau

Dear Representative Murkowski :

Please give consideration to supporting SB37, the physician's negotiation Bill.

When a patient develops an illness, especially an expensive illness, their physician remains their ally. Often their insurance company becomes the adversary . The physician also remains the primary patient advocate when some discounted other aspect of their health plan goes awry. A suffering patient can look into the eye of their physician to seek compassion. (Nurses are, by nature, compassionate but are often under the employ of a more remote entity.) Suffering patients have a much more remote relationship with insurance executives and clerks, hospital administrators, and even legislators.

I believe that SB37 is an important bill strengthening the doctor-patient relationship. Please give it your support. I remain

Sincerely Yours,

Robert W. Arnold

Robert W. Arnold, M.D. 



ALASKA NEUROLOGICAL CONSULTANTS, L.L.C.

Mary Downs, M.D.
Board Certified Neurology

Wayne Downs, M.D.
Board Certified Neurology

Kenneth R. Pervier, M.D.
Board Certified Neurology

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*Board Certified
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Ph: (907) 276-3727
Fax: (907) 276-3622
2751 DeBarr Rd, Ste. 200
Anchorage, Alaska 99508

April 11, 2001

Representative Lisa Murkowski
Chair – House Labor & Commerce Committee
State Capitol Building
Juneau, AK 99801

Dear Representative Murkowski:

RE: SB37 – Physician Negotiation Bill

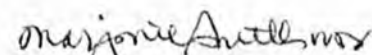
I am a private practice physician in Anchorage, Alaska. I have been informed that SB37 has passed the Senate, 13-6, and is currently before your committee in the House. As you know, the legislative session is fast approaching its conclusion. Before the House has an opportunity to vote on the bill, SB37 has three committee referrals, the first of which is before your committee. I am respectfully requesting that you bring the bill up for consideration at the earliest possible opportunity.

Without passage of the bill, Alaska physicians are currently barred from collectively discussing a host of issues with third party payers, which directly and indirectly affect patient care. SB37 would allow groups of independent physicians to negotiate with health benefit plans so long as there is “active state oversight” of the process. It should be noted that all negotiations are voluntary and any party can withdraw at any time.

In addition, the Alaska Attorney General has veto power over the final contracts, including the fee schedule. This veto power should go a long way toward ameliorating the concerns of those who claim that passage of this bill will simply allow physicians to ratchet up the cost of medicine.

Getting SB37 to this point has involved a great deal of compromise on the part of the physician community and has taken the better part of two years. I sincerely hope you and your House colleagues will do whatever you can do to expedite passage of this important bill.

Sincerely,


Marjorie Smith, M.D.
MS/clb

JOHN B. DEKEYSER, M.D., P.C.
Obstetrics & Gynecology

Alaska Medical Plaza
1200 Airport Heights Drive, #280A
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(907) 264-2317 (800) 818-2229
Fax (907) 264-2320

April 12, 2001

**Representative Lisa Murkowski
Chair- House Labor and Finance Committee
State Capitol Building
Juneau, AK 99801**

Re: SB37-Physician Negotiation Bill

Dear Representative Murkowski:

I am writing to ask your favorable consideration on SB-37. The way I see this bill, it will help to level the playing field where the players are individual physicians and the insurance companies and the referee is the attorney general. Considerable time and effort has already been put into this bill and I want to thank you in advance for your effort and that of your committee.

Sincerely,


John DeKeyser, M.D.

P.S.: Hi Lisa. I hope all is going well for you, Vern & the kids. Thanks for all your hard work in Juneau.

Buff B. Burtis M.D., FCCP

John M. Clark M.D., FCCP



Pulmonary Disease
Internal Medicine

Pulmonary Associates
3340 Providence Drive, Suite 354
Anchorage, AK 99508
Telephone (907) 562-2445
Fax (907) 561-5205

April 9, 2001

Representative Lisa Murkowski
Chair of House Labor and Commerce Committee
State Capitol Building
Juneau, Alaska 99801

Re: SB37- Physician Negotiation Bill

Dear Representative Murkowski,

Please vote for SB37 which has passed the Senate 13-6. This bill would assist Alaska's physicians in gaining a more level playing field in their negotiations with third parties or insurance companies about payment of fees.

The interests of the state and public are well protected by the voluntary basis for physician and third party negotiations and with the veto power of the Alaska Attorney General.

The Alaskan physician is a major health care advocate. The continued restricting and muffling of physician's voices in health care matters is no longer warranted. Freedom of speech and bargaining are important to all our citizens, including physicians.

Cordially,

A handwritten signature in black ink, appearing to read "Buff B. Burtis", written in a cursive style.

Buff B. Burtis, M.D., F.C.C.P.

BBB/lej

cc: M. Haugen

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-8554

February 5, 2001

Senator Robin Taylor
Chair, Senate Judiciary Committee
Mailstop: 3100, Room 30
State Capitol
Juneau, AK 99801-1182

Re: SB 37 – Physician Negotiations with Health Benefit Plans

Senator Taylor:

This letter responds to questions raised during the Senate Judiciary Committee hearing held January 22, 2001, at 1:30 p.m. regarding SB 37, "An Act relating to collective negotiation by physicians with health benefit plans . . ." During the hearing, two specific questions were asked of the Department of Law: (1) How have other states dealt with antitrust issues for this type of legislation? and (2) Are health benefit plans exempt from antitrust laws, and if so, doesn't SB 37 essentially "level the playing field" between physicians and health care plans? We will address each of these questions separately.

1. How have other states dealt with antitrust issues for this type of legislation?

On December 15, 1995, the Washington State Attorney General's Office, with the assistance of economic, management, and policy experts, made a report to the Washington State Legislature (the "Washington Report") on the role of antitrust immunity in Washington's health care market. The purpose of the report was to "examine the issue of whether antitrust immunity should be granted to allow certain activities by health care providers and purchasers which might otherwise violate state or federal antitrust laws."¹ According to the report, eighteen states had statutes (at that time)

¹ The report is 89 pages in length, with an additional 100 pages of appendices. The executive summary and selected portions of the report are attached.

that provided for some degree of antitrust immunity for health care providers. These statutes represent a broad range of approaches to providing antitrust immunity in various circumstances. Some statutes, for example, restrict joint activity to rural areas while others apply only to hospitals. None of the statutes reviewed in the Washington Report provide for the kind of collective negotiation among physicians contemplated by SB 37. A summary of the laws in these eighteen states as of 1995 is included with the attached materials.

We have reviewed the state statutes identified in the Washington Report, as well as other state statutes to identify other states that have adopted laws that allow collective negotiation among physicians in a manner similar to SB 37. We could identify only two states with similar legislation – Washington and Texas. One other state, New Jersey, and the District of Columbia have comparable bills pending.

A. Washington State Law.

In 1997, partially as a response to health care reform and the creation of HMO's, Washington enacted legislation that significantly changed its health care laws. Revised Code of Washington ("RCW") 43.72.300 - .310 was amended to recognize that competition among health care providers, facilities, payers, and purchasers could have beneficial consumer impacts, and provides antitrust immunity to certain health care entities who engage in activities authorized under the statute. The statute does not, however, allow any activity that would result in a *per se* violation of state or federal antitrust laws. This essentially forbids agreements among competitors that relate to price or discount terms and forbids strikes and boycotts.

Before collective negotiations can occur in Washington, a health care entity must make a request to the Department of Health to obtain an informal opinion from the Attorney General as to whether the proposed conduct is authorized. The request must contain a comprehensive description of the proposed activity, how it will meet the goals of health care reform, and the nature of the continued supervision and oversight necessary to ensure that benefits from the proposal outweigh the disadvantages. See Title 245 Washington Administrative Code ("WAC"). Ch. 245-01 and 245-02.

After it receives an opinion from the Attorney General, the Department of Health may authorize the proposed conduct. If the Attorney General determines the conduct is not authorized, the health care entity can petition the Department of Health for review and approval of such conduct in accordance with a specific set of rules and procedures under Washington's Administrative Procedures Act (RCW 34.05 et seq.) that allow for an adjudicative proceeding. If the Attorney General determines the conduct is

authorized, the opinion must include: (1) a description of the continued oversight the AG believes is necessary to ensure the proposal continues to be authorized, (2) the form of annual (or more frequent) progress reports that will allow continuing evaluation, and (3) the types of data the Attorney General believes are necessary to evaluate continuing conduct.

In summary, Washington's statute and related regulations are strictly construed so that *per se* violations of state and federal antitrust law are not allowed (i.e., negotiations over fees cannot occur) and proposed negotiations among competitors for other (non-fee) terms require approval from the Department of Health and the Attorney General. A petitioner can challenge a rejected request through an adjudicatory process established through the Department of Health.

B. Texas Law.

Chapter 29 of the Texas Insurance Code was added in 1999. This legislation, like SB 37, is patterned after the American Medical Association ("AMA") "model" draft and provides antitrust immunity for joint negotiations by physicians with health care plans. This law is the first of its kind in the country. The "findings and purpose" provision of the statute recognizes that in some cases health plans dominate the market to such a degree that fair negotiations between physicians and health plans are unobtainable absent joint action on behalf of physicians. The Texas legislature found it necessary to authorize joint negotiations where such imbalances exist.

The salient features of the law are as follows:

1. The law applies only to health plans that provide benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, and not for several other types of plans.
2. Competing physicians within the service area of a health plan can meet and discuss several non-fee terms.
3. Competing physicians cannot meet and discuss price terms unless the health plan has substantial market power and the price terms to be negotiated have already affected or threaten to adversely affect the quality and availability of patient care. The Attorney General determines what constitutes substantial market power.

4. Competing physicians can communicate with each other, but not with a health plan except through an authorized representative.
5. Before a representative can negotiate with a health plan, it must provide a report to the Attorney General identifying several items of information. After negotiations, the representative must provide the Attorney General with a copy of the proposed agreement or notify the Attorney General that negotiations have failed.
6. The Attorney General must either approve or disapprove an initial filing or proposed contract within 30 days. If the initial filing or contract is disapproved, the Attorney General must provide a written explanation of any deficiencies and a statement of specified remedial measures that would allow such deficiencies can be corrected.
7. The Attorney General can approve an initial filing or proposed contract only if the ATTORNEY GENERAL determines the benefits of the proposal outweigh the disadvantages from a reduction in competition.
8. Joint negotiations are limited to no more than 10 percent of the physicians in a health plan's geographic service area (with limited exceptions).
9. Physicians are prohibited from any cessation, reduction, or limitation of health care services.
10. Physicians may not negotiate with a plan to exclude, limit, or otherwise restrict non-physician health care providers from participation in a health benefit plan based substantially on the fact that the health care provider is not a licensed physician.

The Texas Attorney General drafted regulations to implement this law that were adopted in May 2000. The regulations are comprehensive and require an application for both fee and non-fee-related negotiations to include over 40 categories of information. The Attorney General is then required to conduct an independent investigation to determine whether the proposed negotiations are appropriate and provide approval or disapproval within 30 days. The Texas regulations are attached.

Since the adoption of the above regulations in May 2000, there have been no applications submitted for joint negotiations. Even though the application fee is set at \$4,000, the legislature intended application fees to cover the Attorney General's cost of administering the statute, which is estimated to be \$500,000 annually. In addition, there is some speculation that the Texas law will be challenged soon.

2. *Summary of Washington and Texas laws compared with SB 37.*

Washington's approach to this law was to apply antitrust immunity only to joint negotiations that are not *per se* illegal under state and federal antitrust laws. This removes any fee-related negotiations from the protections of the statute. Even then, Washington has established a fairly comprehensive review procedure that requires active state involvement, including continuing review and investigation of contracts, to determine whether such contracts remain beneficial.

Texas allows fee-related joint negotiations, subject to review and approval by the Attorney General, only when an imbalance in market power is demonstrated. No more than 10 percent of the physicians within the geographic service area of a health plan can be represented in the negotiation. Texas regulations require submission of comprehensive information by an applicant who intends to engage in joint negotiations.

SB 37, unlike Washington's statute, allows fee-related negotiations. Unlike the Texas law, SB 37 allows at *least* 30 percent of the physicians within the geographic service area of a health plan to collectively negotiate whenever a health plan has at least 15 percent of the market share as measured by covered lives, or within a particular service area when all its segments are added together. SB 37 places the burden on the health plan to rebut this statutory presumption, while the Texas law requires physicians to demonstrate that joint activity is necessary.

Finally, SB 37 does not provide for the type of active state supervision and involvement that would satisfy the federal state action immunity doctrine. The level of state oversight and involvement evidenced in Washington's law may be sufficient, but has not been tested. It is doubtful whether the Texas statute and regulations will satisfy the state action requirements.

3. *Are health plans exempt from antitrust laws?*

The issue of health care insurers' "exemption" from antitrust law is a result of the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015. There is a widely held misconception that this Act exempts the insurance industry from all forms of antitrust liability. The Act

provides that the Sherman, Clayton, and FTC Acts (the primary sources of federal antitrust law) are only applicable to the "business of insurance" to the extent that such business is not regulated by state law.

The U.S. Supreme Court has articulated various elements that must be met before the exemption will apply. First is the express statutory requirement that the conduct be regulated by the state. Second, the conduct must qualify as the "business of insurance," which has three key subparts: the conduct (1) must be concerned with "spreading and underwriting policyholder risk," (2) must be an integral part of the policy relationship between an insured and its insurer, and (3) must concern entities within the insurance industry itself. Finally, even if the conduct is regulated and constitutes the "business of insurance," it is nonetheless subject to Sherman Act liability if it consists of a boycott, coercion, or intimidation. *Group Life and Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205 (1979); *Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119 (1982); *Hartford Fire Ins. Co. v. California*, 504 U.S. 764 (1993).²

From the above, it is impossible to speak of "health plans" in the same sense as we refer to insurance companies, and the two should be distinguished. The term "health benefit plan" as used in SB 37 is defined (by reference to AS 21.54.500) to mean an "employee welfare benefit plan as defined in 29 U.S.C. §1002(1) (ERISA), and includes a "plan, fund, or program" that provides medical care to employees directly or through "insurance, reimbursement, or other method." Accordingly, both insured and self-insured "health plans" are included within this definition. Only those plans that meet the McCarran-Ferguson Act requirements, including the requirement that the plan's conduct is the "business of insurance" will be exempt from antitrust scrutiny. We could find no case law that discussed whether employer health plans (much less self-insured plans) meet the requirements for exemption under the Act.

Examples of conduct that is not exempt from antitrust review can be found in *Pireno, supra* (peer review committee established to review reasonableness of chiropractic treatments not exempt) and *Hartford, supra* (conduct by defendants that forced primary insurance carriers to adopt policy terms favoring commercial liability coverage was a "boycott" not subject to protection). In a 1983 Ninth Circuit case, the court held a regional health care provider that offered prescription drugs to its members at a discount was exempt from antitrust review under the McCarran-Ferguson exemption because the sales (1) were pursuant to health care policies regulated by the state; (2) were

² AS 21.36.080 also forbids a person from entering into an agreement to commit an act of boycott, coercion, or intimidation resulting, or tending to result in, unreasonable restraint of, or monopoly in, the business of insurance.

part of the broader "spreading of risks" for health care; (3) concerned the relationship between the insurer and insured; and (4) were confined to transactions between the insured and insurer. *Klamath-lake Pharmaceutical Ass'n v. Klamath Medical Service Bureau*, 710 F.2d 1276 (9th Cir. 1983).

Similarly, the McCarran-Ferguson Act was held to shield a Blue Cross organization with respect to assorted practices that had been reviewed and approved by state regulators. *Ocean State Physicians Health Plan, Inc. v. Blue Cross and Blue Shield of Rhode Island*, 883 F.2d 1101 (1st Cir. 1989). In that case, the plaintiff was a health financing HMO that entered a market where Blue Cross had significant business. Blue Cross responded by countering with a competing HMO tailored to match the plaintiff's service at a reduced price for employers who agreed to use the Blue Cross/HMO combination. The First Circuit held this conduct was exempt from antitrust challenge because Blue Cross met the "business of insurance" test.

Recently, the antitrust division of the Department of Justice challenged contractual provisions imposed on dentists in Rhode Island (*United States v. Delta Dental of Rhode Island*, 943 F. Supp. 172 (D. Rhode Island 1996)) and certain hospitals in the Cleveland, Ohio area (*United States v. Medical Mutual of Ohio, Inc.*, No. 1:98-CV-2172, (N.D. Ohio 2000)).

Except for the limited circumstances outlined in the McCarran-Ferguson Act as narrowly interpreted by the U.S. Supreme Court, the same state and federal antitrust laws that apply to other industries apply to health care insurers. Depending on the specific circumstances of each particular "health care plan," the exemption may or may not apply.

4. Conclusion.

The Department of Law continues to have serious antitrust concerns with SB 37. To comply with the requirements of the state action immunity doctrine, the bill must include provisions that allow for significant and active state oversight. Other states have no history with legislation of this kind. Washington's law does not allow joint negotiations by physicians on price terms, and it includes provisions for active state

Senator Robin Taylor
Chair, Senate Judiciary Committee

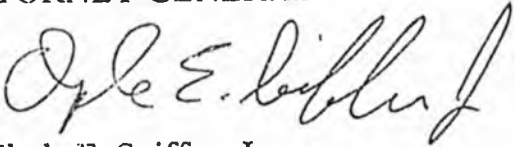
January 30, 2001
Page 8

oversight for non-price negotiations. Texas' law requires the state Attorney General to review and approve initial applications and proposed contracts, but its new regulatory structure is untested against the state action doctrine and may not provide the level of active state involvement required for antitrust immunity.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Clyde E. Sniffen, Jr.
Assistant Attorney General

CES/sjm
Enclosures

cc: Senate Judiciary Committee Members
Senator Pete Kelly
Mike Abbot, Governor's Legislative Director
Chrystal Smith, Legislative Liaison, Department of Law

OFFICE OF THE ATTORNEY GENERAL
STATE OF WASHINGTON

REPORT TO THE WASHINGTON STATE LEGISLATURE
DECEMBER 15, 1995

Christine O. Gregoire
Attorney General
John P. Ferguson
Senior Counsel

Prepared by:

Tina E. Kondo
Assistant Attorney General

David G. Forster
Law Clerk

Office of the Attorney General
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Economics, Management and Policy

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THE ROLE OF ANTITRUST IMMUNITY IN THE WASHINGTON STATE HEALTH CARE MARKET

I. EXECUTIVE SUMMARY

The Legislature directed the Attorney General to examine the issue of whether antitrust immunity should be granted to allow certain activities by health care providers and purchasers which might otherwise violate state or federal antitrust laws. This report presents the arguments for and against immunity and provides empirical evidence of the role competition has played in the health care service market in Washington.

Representatives of the various segments of the health care industry were invited to provide input and submitted information in support of their claims for immunity. Several strong arguments were made in favor of immunity. Providers fear antitrust prosecution and claim such fear freezes their ability to move forward in the development of managed care programs. They claim that the antitrust laws prevent the development of seamless delivery systems which would result in better patient care. The need for a "level playing field" between providers, or providers and third party payers, was also cited as an argument for immunity. Finally, it was noted that many rural areas simply do not have the population base to support competition and thus it is argued that immunity should be granted for rural activities.

Opponents of immunity fear that it will result in higher prices and a decrease in quality and services. Competition is seen as a critical ingredient in the cost-conscious health care industry, with or without managed care. Immunity opponents also note that a regulatory scheme would be necessary to replace antitrust enforcement, to prevent marketplace abuses. Such a regulatory scheme would be costly and creates inflexibility in the system.

Empirical data and the economic study of Washington markets demonstrate significant beneficial effects from the presence of competition in Washington, for both the hospital and physician markets. Purchase data has been analyzed, along with anecdotal information. Based on the data provided, economics do not seem to support an argument for immunity.

Similarly, a review of the case law and enforcement guidelines in this area demonstrates that the perception of the threat of antitrust enforcement is much greater than would seem warranted by the actions taken. Many of the activities for which immunity is requested are already permissible under current antitrust law and enforcement guidelines.

The grant of antitrust immunity, especially in cases involving price-fixing and monopolization, could have a very significant impact on the competitiveness of managed care programs. Therefore, the benefits to be derived from immunity should be real, measurable and substantial. We were not presented with a single example by those in favor of immunity to support the existence of clear and measurable benefits to consumers that would result from activities permitted only if immunity is granted.

If the legislature deems that immunity is necessary, a wide variety of options exists. We have provided a comprehensive review of the immunity statutes passed by other states, as well as a survey of what state and federal enforcement action has been taken. The variety of approaches highlights the complexity of addressing this issue for the health care industry.

immunity.

IX. THE NEED FOR AN IMMUNITY STATUTE AND THE STATUS OF IMMUNITY IN OTHER STATES

A. Progress in the Health Care Industry in States With and Without Antitrust Immunity

The Attorney General was also directed to "include a summary of how other states have allowed for greater coordination and consolidation of health care services without such additional immunities."¹³⁸

Pleas for immunity have been premised in part on the argument that antitrust enforcement is impeding the development of health care. As noted above, antitrust proponents argue the opposite: that without the protection of antitrust laws, innovation in this area would have been stifled, preventing the development of the managed care networks we see today.

It is difficult to find baseline statistics to measure the progress of developments in the health care area. States do not routinely keep statistics on what developments have taken place even if they have an immunity statute. Thus, we have no way of measuring progress. Although we generally assumed that the health care industry did not stagnate in the thirty-two states without immunity, we had little comparative data upon which to draw conclusions.

We were unable to find support for the proposition that the antitrust laws have "chilled" progress.¹³⁹ As commentator David Burda has noted, "in fact, the overwhelming amount of evidence indicates that hospitals, with a few notable exceptions, have done just about anything they've wanted."¹⁴⁰ Based on American Hospital Association data, Burda notes that nearly 300 hospitals engaged in collaborative ventures, and notes that nearly 200 hospital mergers occurred between 1980 and 1991.¹⁴¹ Although 44% of CEOs surveyed claimed that antitrust enforcement had slowed their plans, 72% said they were still planning to share services with another hospital and 52% disagreed that antitrust enforcement had a chilling effect.¹⁴² In contrast, only 27 of 229 hospital mergers were investigated by the DOJ and FTC during the

¹³⁸1995 Wash. Laws Ch. 267, § 9.

¹³⁹We attempted to elicit information concerning hospital mergers from the American Hospital Association, but none was received prior to the publication of this report.

¹⁴⁰David Burda, Mergers Thrive Despite Wailing About Adversity, *Modern Healthcare*, October 12, 1992, at 26.

¹⁴¹*Id.* at 26-27. From 1981 to 1991, the FTC and the DOJ reviewed 307 Hart-Scott-Rodino filings for acute care hospital mergers. The agencies did not report how many filings actually resulted in mergers. General Accounting Office, Health Care: Federal and State Antitrust Actions Concerning the Health Care Industry, 8-9 (1994).

¹⁴²David Burda, Mergers Thrive Despite Wailing About Adversity, *Modern Healthcare*, October 12, 1992, at 26.

1987-91 time period, leading to only 3 actions.¹⁴³ Similar statistics for both state and federal enforcement are discussed below.

We also attempted to elicit examples from the Washington State Medical Association, Washington State Hospital Association, and the Office of Rural Health, demonstrating procompetitive transactions which would be prohibited by the antitrust laws. We did not receive any examples, although all of these groups expressed fear of antitrust enforcement as a primary concern.

B. The Status of Immunity in Other States

If the Legislature chooses to maintain a procedure for state action immunity, a wide range of options exists. Our survey revealed that immunity provisions ranged from the extremely limited, such as joint activity for purposes of organ transplantation procedures, to the extremely broad, such as the scheme present here in Washington. Table IX.B. illustrates the variety of immunity statutes.

Eighteen states have statutes providing some degree of antitrust immunity for health care providers.¹⁴⁴ The general legislative purpose of these statutes is to provide the citizens of the states with better health care, generally measured as an improvement in the quality, access, or cost efficiency of health care. The legislatures believe that offering some type of antitrust immunity to health care providers will allow those providers to supply better health care.

Although the eighteen different legislatures passed the antitrust immunity statutes with the same general purpose, the statutes represent the approaches of eighteen different legislatures to a complex problem. As a result, the statutes exhibit a great deal of variety. There are several issues that arise commonly among the statutes, but not all of the issues are necessarily addressed in each statute. These general issues are:

- 1) The identity of the providers offered immunity;
- 2) the type of activity granted immunity by the statute;
- 3) the identity of the state agency that grants immunity.

¹⁴³Id. at 30, citing Charles James, Assistant Attorney General of the DOJ; General Accounting Office, Health Care: Federal and State Antitrust Actions Concerning the Health Care Industry, 8-9 (1994). We realize the AHA numbers and the FTC/DOJ numbers do not correspond precisely. This is part of the problem we encountered in searching for base data on mergers.

¹⁴⁴The nineteenth state, Florida, repealed its immunity statute as part of the repeal of its health care reform act. Two states, Massachusetts and Michigan, currently have pending antitrust immunity statutes for health care providers. Proposed antitrust immunity statutes failed in Maryland, Missouri, and New Jersey.

There are several excellent articles addressing the antitrust immunity statutes. See James Blumstein, Health Care Reform and Competing Visions of Medical Care: Antitrust and State Provider Cooperation Legislation, 79 Cornell L. Rev. 1459 (1994); General Accounting Office, Health Care: Federal and State Antitrust Actions Concerning the Health Care Industry; GAO/HEHS-94-220 (1994); Robert Langer, The Relationship Between the State Action Immunity Doctrine and State Provider Collaboration Statutes, address presented to the National Health Lawyers Association, Washington D.C. (Feb. 16 1995); Sarah Vance, Immunity for State-Sanctioned Provider Collaboration after Ticor, 62 Antitrust L.J. 409 (1994).

- 4) the role of the state attorney general;
- 5) the criteria the state agency uses to decide whether to grant immunity;
- 6) the standard of proof the agency applies to the criteria; and
- 7) the statement of clear articulation and ongoing supervision required to satisfy the state action immunity doctrine.

The first issue is the identity of the providers to whom antitrust immunity is granted. At a minimum, all eighteen of the statutes provide immunity for some hospital transactions. Oregon is the most restrictive, allowing only certain hospitals to operate a joint venture for performing heart and kidney transplantations.

Ten statutes also include joint activity by other types of health care providers. Generally, these statutes include providers such as physicians, nursing homes, home health care agencies, and ambulatory surgical centers.¹⁴⁵ South Carolina even includes health care purchasers. Washington's statute is very broad, and covers activity proposed by certified health plans, health care facilities, health care providers, or any other person.¹⁴⁶ Two states, Kansas and New York, allow immunity only for providers in rural areas.

The second issue is the type of activity immunized by the statute. Twelve of the statutes provide immunity for joint ventures only. Two provide immunity for joint ventures and mergers. Georgia's statute addresses only mergers. Three states, including Washington, permit other activities such as cooperative agreements. Washington's statute specifically provides potential immunity for "conduct that could tend to lessen competition in the relevant market."¹⁴⁷

The third issue is the identity of the state agency that grants the immunity. Under all 18 statutes, the hospitals or providers must apply to the proper agency for approval. In many of the states, the approving agency is the Department of Health or an agency with a similar title. However, some go to the public health agency, and some states such as Washington and Colorado have health boards which authorize the activity.¹⁴⁸ Under the Idaho statute, the attorney general authorizes the activity.

The fourth issue is the role of the attorney general. Approximately half of the statutes require that the granting agency consult with the attorney general. The power of the Attorney General to act varies by state. At one extreme, the Idaho Attorney General authorizes the activity and the North Carolina Attorney General can veto the proposed action. At the other extreme, five state statutes provide no specific role for the attorney general. Most statutes limit the attorney general to giving an opinion, as does Washington's.¹⁴⁹

The fifth issue is the criteria the state agency uses to decide whether to grant immunity.

¹⁴⁵See table IX.B.

¹⁴⁶RCW 43.72.310(2)(a) (1994).

¹⁴⁷RCW 43.72.310(3) (1994), amended by 1995 Wash. Laws Ch. 267, § 8(3).

¹⁴⁸RCW 43.72.310 (1994) and 1995 Wash. Laws Ch. 267 refer to the Health Care Commission. However, the Commission has been replaced by the Health Care Policy Board.

¹⁴⁹RCW 43.72.310(1), amended by 1995 Wash. Laws Ch. 267, § 8(1)

Generally, the granting agency is directed to balance the benefits of the proposed activity against the disadvantages. The statutes for the most part base the definition of benefits on the public health triad of quality, access, and efficiency. The cooperative action must improve the quality of health care, create greater access to health care, or result in greater efficiency in health care and thus lower costs to the citizens. Many statutes list additional benefits, such as the preservation of hospital services in geographic proximity to communities and the avoidance of the duplication of services.

Once the agency determines that these benefits will occur, the benefits must be weighed against the disadvantages of allowing the cooperative activity. Examples of disadvantages are reductions in competition, adverse effects on quality or access, adverse impacts on the ability of health care payers to negotiate competitive contracts with hospitals and providers, and the possibility of arrangements less restrictive of competition.

At one extreme, Georgia's statute does not address any benefits or disadvantages. Conversely, Washington's statute lists as benefits quality, the avoidance of duplication of resources, utilization, and cost efficiency.¹⁵⁰ As to the latter two, it also lists the facilitating of information exchange on performance, the simplification of negotiations, and the reduction of transaction costs.¹⁵¹ These benefits are to be weighed against the disadvantages of reduced competition, adverse impact on quality, availability, or price of health care services, and the availability of less restrictive arrangements.¹⁵²

The sixth issue is the standard of proof the agency applies to the criteria. At least six states demand that the applicants show by "clear and convincing" evidence that the benefits will outweigh the disadvantages. Many other states ask only that the benefits be "likely" to outweigh the disadvantages. Finally, several states have no provision for the standard of proof. Washington's statute requires a "strong showing" that the conduct is likely to achieve the benefits.¹⁵³

The seventh issue is the statement of clear articulation and degree of active supervision, which must be mandated to meet the requirements of the state action immunity doctrine. Most of the statutes do clearly articulate the state's intent to displace competition.¹⁵⁴ Washington's statute declares an intention to displace competition and to immunize activity approved pursuant to the statute.¹⁵⁵

It is unlikely, however, that all of the states require sufficient active supervision to meet

¹⁵⁰RCW 43.72.310(4) (1994).

¹⁵¹Id.

¹⁵²Id.

¹⁵³RCW 43.72.310(2)(a) (1994).

¹⁵⁴See California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97 (180), supra: pp. 12-13.

¹⁵⁵RCW 42.73.300 (1994).

the standards of Ticor.¹⁵⁶ Some states make no mention of supervision. Many other statutes provide only that the agency or attorney general may require reports. Washington and a few other states specifically require active supervision.¹⁵⁷ The lack of adequate state supervision could be one of the reasons why health care providers have not used the immunity statutes in most states where they are available.¹⁵⁸

Our survey demonstrates that a wide variety of options is available for implementing an immunity process if one is deemed necessary. Our present statute could be maintained in its broad form, or it could be narrowed in some fashion. However, care should be taken, as with the present statute, to both clearly articulate an intention to displace competition and provide for meaningful, active supervision of any approved conduct.

¹⁵⁶See Federal Trade Commission v. Ticor Title Insurance Co., 112 S. Ct. 2169 (1992), supra, page 13-14.

¹⁵⁷RCW 43.73.310(6) (1994).

¹⁵⁸ For a strong presentation of this argument, see Robert M. Langer, The Relationship Between the State Immunity Doctrine and State Provider Collaboration Statutes, Address to the National Health Lawyers Association, Washington D.C. (February 16, 1995).

**TABLE IX.B.
ANTITRUST IMMUNITY STATUTES**

| STATE* | ACTIVITIES COVERED | PROVIDERS COVERED | STATUTE(S) | ACTIVITY IF ANY |
|-----------------------------------|---|---|---|--|
| Colorado | Joint ventures | Hospitals | The Hospital Efficiency and Cooperation Act (1993 Colorado Sess. Laws p. 1888); Colorado Rev. Stat §§ 25.5-1-501 to -516 (1995); (original version at Colorado Rev. Stat. §§ 24-32-2701 to -2715 (1993)). | None |
| Florida <u>REPEALED</u> | Joint ventures | Certified rural hospitals and other certified rural health care providers | Health Reform Act of 1993 (1993 Florida Laws ch. 93-129); Fla. Stat. Ann. § 395.304 (<u>REPEALED BY</u> Fl Legis 95-146, s 18 (1995)). | None |
| Georgia | Mergers | Specified county hospital authorities | The Hospital Authorities Law (1993 Georgia Laws p. 1020); Ga. Code Ann. § 31-7-72.1 (1994). | None |
| Idaho | Joint ventures | Hospitals, physicians and other health care providers | Session Law Chapter 283 Regarding Idaho Health Care Planning Act (1994 Idaho Sess. Laws ch. 283); Idaho Code §§ 39-4901 to -4903 (1994). | No activity. No funding for implementation authorized. |
| Kansas | Mergers and joint ventures in rural health networks | Hospital, physicians and other health care providers in rural areas | Health Care Provider Cooperation Act (1994 Kansas Sess. Laws 153); Kan. Stat. Ann. §§ 65-468 to -472 (1993). | None |

| | | | | |
|----------------|---|---|--|---|
| Maine | Joint ventures | Hospitals | Hospital Cooperation Act of 1972 (1991 Main Laws c. 814, sec. 1); Maine Rev. Stat. Ann. ch. 405-D (West 1993); Me. Rev. Stat. Ann. title 22 §§ 1881-1887 (1994). | One application approved - Joint venture on MRI unit |
| Minnesota | Mergers and joint ventures | Hospitals, health care providers, and health care purchasers | The Minnesota Integrated Service Network Act (1993 Minnesota Laws ch. 345, art. 6, sec. 14); Minnesota Stat. Ann. §§ 62J.2912 to .2921 (1994). | One application approved - Merger of two hospital systems |
| Montana | Joint ventures, mergers, and consolidations | Hospitals and physicians | An Act Providing for Universal Health Care Access (1993 Mont. Laws ch 606); Mont. Code Ann. §§ 50-4-601 to -612 (1994); (amended by 1995 Mont. Laws ch 378). | None |
| Nebraska | Joint ventures | Hospitals and health care providers | The Health Care Facility-Provider Cooperation Act (1994 Nebraska Laws 1223); Neb. Rev. Stat. §§ 71-7701 to -7711 (1994). | None |
| New York | Joint ventures and integrative arrangements | Hospitals, physicians and other health care providers serving rural areas | Cooperative Programs and Networks in Rural Areas Act (1993 New York Laws ch. 731); N.Y. Pub. Health Law 45 §§ 2950-2958 (McKinney 1993, 1995 Interim Update). | None |
| North Carolina | Joint ventures | Hospitals (and other persons in a joint venture with a hospital) | Hospital Cooperation Act of 1993 (1993 North Carolina Sess. Laws ch. 529); N.C. Gen. Stat. §§ 131E-192.1 to -192.13 (1994). | None |

| | | | | |
|----------------|----------------------------|---|--|------|
| North Dakota | Joint ventures and mergers | Hospitals, health care providers, and third-party payers | Health Care Provider Cooperative Agreements (1993 North Dakota Laws ch. 263); N.D. Cent. Code § 23-17.5-01 to 17.5-1i (1993); (Amended by 1995 N.D. Laws H.B. 1050). | None |
| Ohio | Joint ventures | Hospitals | Voluntary Cooperative Actions to Improve Health Care (1992 Ohio Laws 209); Ohio Revised Code Ann. sec. 3727.21 to .24 (Baldwin 1995). | None |
| Oregon | Joint ventures | Hospitals (for heart and kidney transplantations and related services only) | Cooperative Program on Heart and Kidney Transplants (1993 Oregon Laws ch. 769); Or. Rev. Stats. §§ 442.700 to .760 (1994). | None |
| South Carolina | Joint ventures and mergers | Hospitals, health care providers, and purchasers | South Carolina Health Care Cooperation Act, §§ 44-7-500 to -590 of the Code of Laws of South Carolina (1994). | None |
| Tennessee | Joint ventures | Hospitals | Hospital Cooperation Act of 1993 (1993 Tennessee Public Acts ch. 331); Tenn. Code Ann §§ 68-11-1301 to -1309 (1994). | None |

| | | | | |
|------------|---|---|---|---|
| Texas | Joint ventures | Hospitals | An Act Relating to Cooperative Agreements Among Hospitals (1993 Texas Sess. Law Serv. ch. 638 (Vernon)); Tex. Health & Safety Code Ann. §§ 313.001 to .008 (1993); <u>Recodified as</u> Tex. Health & Safety Code Ann. §§ 314.001 to 008. <u>by</u> Tx. Legis. Ch. 76, § 17.01(25) (1995). | None |
| Washington | (1) Cooperative agreements (2) Cooperative agreements, including joint ventures, acquisitions, and mergers | Rural hospital districts Health plans, health care facilities including hospitals, and health care providers | Act Relating to Cooperative Activities of Local Governments (1992 Washington Laws ch. 161); Wash. Rev. Code §§ 39.34.030 to .060 and Wash. Rev. Code §§ 70.44.450 to .460 (1994). Washington Health Services Act of 1993 (1993 Washington Laws ch. 492); Wash. Rev. Code § 43.72.310 (1994); <u>Temporarily suspended by</u> 1995 Washington Laws ch. 267, § 9). | None Eleven petitions: 2 approved, 3 pending, 6 withdrawn. |

| | | | | |
|-----------|----------------|---|---|------|
| Wisconsin | Joint ventures | Hospitals, physicians, and other health providers | 1991 Wisconsin Act 250 Regarding Health Care Cooperative Agreements, September 1992 (1991 Wisconsin Laws Act 250) Wis. Stat. § 150.84 to .92 (1995) | None |
|-----------|----------------|---|---|------|

* Connecticut and Maryland both have had legislation involving comprehensive hospital review mechanisms for a substantial period of time. Thus, neither state is included in either the chart or the text. The Iowa Health Insurance Purchasing Cooperative Project, 1993 Iowa Acts, Ch. 158; Iowa Code § 96.3.10 has also been excluded.

This is an updated version of the chart presented by Robert M. Langer in The Relationship Between the State Immunity Doctrine and State Provider Collaboration Statutes, Address to the National Health Lawyers Association, Washington D.C. (Feb. 16, 1995).

C. State Enforcement Activity in the Health Care Industry and the Impact of an Antitrust Immunity Statute

We next attempted to discover if the presence of antitrust immunity affected the number of antitrust cases filed by state enforcement agencies. Our approach here was to first gather information concerning the types of enforcement activities that have occurred in both immunity and non-immunity states. We then compared the activity in the non-immunity states with the immunity states to see if there was a significant difference in the level of activity. Finally, we compared the enforcement activity in the immunity versus non-immunity states to see if there was a quantitative or qualitative difference in the enforcement actions taken.¹⁵⁹

We concluded that the absence or presence of an immunity statute had little effect on the number or types of enforcement actions. The rate of enforcement actions challenging transactions appeared to be no greater in the non-immunity states than in the immunity states. State attorneys general filed only twelve formal state antitrust enforcement actions in the health care field from January 1994 to September 1995. Eight of those were filed in states without an immunity statute in place, and four were filed in states with immunity statutes, but outside of the immunity process. Roughly half as many states have immunity as do not.¹⁶⁰ Therefore, the rate of antitrust filings did not appear to be lower for immunity states.¹⁶¹

It is important to remember two things when examining the number of actions taken by state antitrust enforcement officials. First, the number of actions taken as a percentage of total activity that took place in the industry remains quite small. Thus, of the hundreds of transactions that took place during the last two years, only a handful met with scrutiny and of those only a few were challenged. Although we have taken the time below to explain the circumstances of the challenges, far more transactions took place which were unrestrained and likely did not violate state or federal antitrust laws. For example, according to our survey, since January 1994, attorneys general nationwide have closed at least thirty-four investigations without further action. Seventeen of those involved hospital mergers and an additional six involved health systems mergers. Six involved alleged boycotts.¹⁶²

Second, private parties can challenge transactions and are not required to report such challenges to their state antitrust authorities. This prohibits us from being able to report on the number of private actions because many are settled or dismissed without our knowledge.

¹⁵⁹The Washington Attorney General based this part of the study in part on a recent survey by the National Association of Attorneys General Health Care Antitrust Task Force. Twenty-three states provided written responses to the survey. The additional state attorneys general, except for Wyoming's, who did not respond to calls, were contacted directly by the Office of the Attorney General.

¹⁶⁰Eighteen states have immunity statutes; thirty-two do not.

¹⁶¹Two of those enforcement actions were brought by the Florida Attorney General. The Florida legislature repealed the Florida immunity statute in 1995. We kept the actions on the immunity statute table because the actions were instigated and mostly resolved before the legislature repealed the statute.

¹⁶²Similarly, we have been apprised of approximately seventeen health care industry investigations currently ongoing, approximately half of which involve hospital mergers.

Although a few have come to our attention, we have not included them in our survey, nor do we have a way of determining if their numbers were affected by the presence of an immunity statute.

1. Enforcement Activity in States Without Immunity Statutes

There are thirty-two states without antitrust immunity statutes for health care providers.¹⁶³ Twenty-one of these thirty-two states reported no state enforcement activity in the health care field. Those states are Alabama, Alaska, Arkansas, California, Delaware, Hawaii, Illinois, Indiana, Iowa, Louisiana, Michigan, Mississippi, Nevada, New Jersey, New Mexico, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, and West Virginia.

Seven attorneys general reported eight consent decrees.¹⁶⁴ Two involved hospital mergers (Kentucky/DOJ and New Hampshire/DOJ), two involved health system mergers (both in Pennsylvania), one involved a boycott (Arizona), one involved §§ 1 and 2 violations by a Physician-Hospital Organization (Connecticut and the DOJ), one involved price-fixing and a boycott by a doctor's group (Virginia), and one involved monopolization concerns raised by a physician group acquisition and the physicians' steering of patients to ancillary services owned by those physicians (Missouri).

In addition to the formal action taken, the attorneys general in non-immunity states also took the following informal actions. Four assurances of discontinuance were negotiated by the Massachusetts Attorney General; one involved monopolization concerns arising from a boycott by an insurer and a hospital against another hospital, one involved a hospital merger, one involving a Health Maintenance Organization merger, and one involved exclusivity concerns arising from a "right of first opportunity" clause in a Physician-Hospital Organization contract.

There was also one voluntary compliance on a Physician-Hospital Organization "right of first opportunity" contract clause (Massachusetts), and two out-of-court agreements, one addressing exclusive dealings concerns by physicians (New Hampshire), and one focusing on concerns regarding acquisitions by a health system (Missouri).

The Maryland Attorney General informally issued a business review approval of a home health care joint venture.

Of the sixteen formal and informal actions addressed, all were resolved through negotiation of some form of settlement agreement which permitted the activity to go forward, but with certain constraints. Notably, none of the transactions was subjected to a full trial on the merits.

As the survey indicates, a great number of transactions are taking place throughout the country. Those drawing the attention of enforcement agencies include provider mergers, boycotts and market power issues. Yet even those which have been the subject of action have been allowed to occur under limited conditions. Based on the survey results and apparent outcomes, it is difficult to state that health care industry activity has been stifled by enforcement in states without immunity. In such states, in those rare instances in which they have been problematic,

¹⁶³Wyoming does not have a statute, but did not respond to our investigation. Florida is now one of the thirty-two, but is included with the immunity states because it brought antitrust actions before it repealed its statute.

¹⁶⁴See Table IX.C.1., *infra*.

the problems have been successfully addressed by negotiated settlements between the parties and the antitrust enforcement agencies.

Additionally, virtually every state attorney general has expressed a willingness to informally meet with parties to discuss health care proposals and potential antitrust ramifications, either through a business review procedure or in the normal course of business. We did not report such discussions unless they resulted in some form of action because they were too numerous to track. However, for both states with and without immunity, these informal mechanisms are frequently used.