

52:17B-196

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2001 **CHAPTER:** 371
NJSA: 52:17B-196 (“Health Care Accountability Act”)
BILL NO: S1033/1098 (Substituted for A2169)

SPONSOR(S): Bark and others

DATE INTRODUCED: February 28, 2000

COMMITTEE: **ASSEMBLY:** Health

SENATE: Health

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 7, 2002

SENATE: December 4, 2000

DATE OF APPROVAL: January 8, 2002

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Senate Committee Substitute for S1033/1098 (1R) enacted)
(Amendments during passage denoted by superscript numbers)

S1033/S1098

SPONSORS STATEMENT (S1033): (Begins on page 8 of original bill) Yes

SPONSORS STATEMENT (S1098): (Begins on page 13 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: Yes

LEGISLATIVE FISCAL ESTIMATE: No

A2169/2241/464

SPONSORS STATEMENT (A2169): (Begins on page 8 of original bill) Yes

SPONSORS STATEMENT (A2241): (Begins on page 13 of original bill) Yes

SPONSORS STATEMENT (A464): (Begins on page 8 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

FINAL VERSION: (Assembly Committee Substitute) Yes

VETO MESSAGE: No

GOVERNOR’S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: Yes

974.90 New Jersey. Legislature. Senate. Health Committee.

H434 Public hearing on S1033 and S1098, held May 5, 2000

2000f Trenton, 2000

NEWSPAPER ARTICLES: No

Pennsylvania Senate Bill 1052 (1999) (Referred to sponsor’s statement to S1098)

Texas Senate Bill 1468 (1999) (Referred to in sponsor’s statement to S1033)

SENATE, No. 1033

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED FEBRUARY 28, 2000

Sponsored by:

Senator MARTHA W. BARK

District 8 (Atlantic, Burlington and Camden)

Senator DONALD T. DIFRANCESCO

District 22 (Middlesex, Morris, Somerset and Union)

Co-Sponsored by:

Senators Allen, Gormley and Bennett

SYNOPSIS

Allows physicians to jointly negotiate with health benefits plans over contractual terms and conditions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/14/2000)

1 AN ACT providing for certain joint negotiations by physicians with
2 health benefits plans and supplementing Title 52 of the Revised
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. As used in this act:

9 "Carrier" means an insurance company, health service corporation,
10 hospital service corporation, medical service corporation or health
11 maintenance organization which is authorized to issue health benefits
12 plans in this State.

13 "Covered person" means a person on whose behalf a carrier which
14 offers a health benefits plan is obligated to pay benefits or provide
15 services pursuant to the plan.

16 "Covered service" means a health care service provided to a
17 covered person under a health benefits plan for which the carrier is
18 obligated to pay benefits or provide services.

19 "Health benefits plan" means a plan which pays or provides hospital
20 and medical expense benefits for covered services, and is delivered or
21 issued for delivery in this State by or through a carrier. For the
22 purposes of this act, health benefits plan shall not include the following
23 plans, policies or contracts: Medicare supplement coverage and risk
24 contracts, accident only, specified disease or other limited benefit,
25 credit, disability, long-term care, CHAMPUS supplement coverage,
26 coverage arising out of a workers' compensation or similar law,
27 automobile medical payment insurance, personal injury protection
28 insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.),
29 dental or vision care coverage only, or hospital expense or
30 confinement indemnity coverage only.

31 "Physician" means a person who is licensed to practice medicine or
32 surgery, including podiatric medicine, by the State Board of Medical
33 Examiners in accordance with the provisions of Title 45 of the Revised
34 Statutes.

35 "Physicians' representative" means a third party, including a
36 physician engaging in joint negotiations under this act, that is
37 authorized by two or more physicians to negotiate on their behalf with
38 a health benefits plan over the terms and conditions of a contract that
39 affects those physicians.

40 "Utilization management" means a system for reviewing the
41 appropriate and efficient allocation of health care services under a
42 health benefits plan in accordance with specific guidelines, for the
43 purpose of determining whether, or to what extent, a health care
44 service that has been provided or is proposed to be provided to a
45 covered person is to be covered under the health benefits plan.

- 1 2. Two or more competing physicians who are practicing in the
2 service area of a health benefits plan may meet and communicate in
3 order to jointly negotiate one or more of the following terms or
4 conditions of a contract with the health benefits plan:
 - 5 a. practices and procedures to assess and improve the delivery of
6 effective, cost-efficient preventive health care services, including, but
7 not limited to, childhood immunizations, prenatal care, and
8 mammograms and other cancer-screening tests or procedures;
 - 9 b. practices and procedures to encourage early detection and
10 effective, cost-efficient management of diseases and illnesses in
11 children;
 - 12 c. practices and procedures to assess and improve the delivery of
13 women's medical and health care, including, but not limited to, care for
14 menopause and osteoporosis;
 - 15 d. clinical criteria for effective, cost-efficient disease management
16 programs, including management programs for diabetes, asthma and
17 cardiovascular disease;
 - 18 e. practices and procedures to encourage and promote patient
19 education and treatment compliance, including involvement by a parent
20 with a child's health care;
 - 21 f. practices and procedures to identify, correct and prevent
22 potentially fraudulent activities;
 - 23 g. practices and procedures for the effective, cost-efficient use of
24 outpatient surgery;
 - 25 h. clinical practice guidelines and coverage criteria;
 - 26 i. administrative procedures, including, but not limited to, methods
27 and timing of payment to physicians for services;
 - 28 j. procedures for resolving disputes between physicians and the
29 health benefits plan;
 - 30 k. procedures for referring patients;
 - 31 l. the formulation and application of physician reimbursement
32 methodology;
 - 33 m. quality assurance activities;
 - 34 n. utilization management procedures;
 - 35 o. criteria used by the health benefits plan to select and terminate
36 physicians; or
 - 37 p. the inclusion or alteration of a contractual term or condition,
38 except when the inclusion or alteration is required by a federal or State
39 regulation concerning that term or condition; however, the restriction
40 shall not limit physician rights to jointly petition the federal or State
41 government, as applicable, to change the regulation.
- 42
43 3. Except as provided in section 4 of this act, two or more
44 competing physicians who are practicing in the service area of a health
45 benefits plan shall not meet and communicate in order to

1 jointly negotiate any of the following terms or conditions of a contract
2 with the health benefits plan:

3 a. the fee or price for a physician service, including those
4 determined by the application of a reimbursement methodology;

5 b. the conversion factors in a resource-based relative value scale or
6 similar reimbursement methodology;

7 c. the amount of a discount on the price of a service provided by a
8 physician; or

9 d. the dollar amount of capitation or fixed payment for physician
10 services provided to a covered person.

11

12 4. a. Notwithstanding the provisions of section 3 of this act to the
13 contrary, two or more competing physicians who are practicing in the
14 service area of a health benefits plan may jointly negotiate any of the
15 terms or conditions of a contract with the health benefits plan that are
16 specified in that section upon a finding by the Attorney General, in
17 consultation with the Commissioners of Banking and Insurance and
18 Health and Senior Services, that the health benefits plan has substantial
19 market power in its service area and that any of the terms or
20 conditions pose an actual or potential threat to the quality and
21 availability of patient care among covered persons.

22 b. The Department of Banking and Insurance, in consultation with
23 the Department of Health and Senior Services, shall have the authority
24 to collect and investigate such information as it reasonably believes is
25 necessary to determine, on an annual basis:

26 (1) the average number of covered lives per month per county by
27 every health benefits plan in the State; and

28 (2) the impact of the provisions of this section on average physician
29 fees in the State.

30 The Department of Banking and Insurance shall provide this
31 information to the Attorney General on an annual basis.

32 c. The provisions of this subsection shall not apply to a health
33 benefits plan which is certified by the Commissioner of Human
34 Services to the Attorney General as providing covered services
35 exclusively or primarily to persons who are eligible for medical
36 assistance under P.L.1968, c.413 (C.30:4D-1 et seq.) or the Children's
37 Health Care Coverage Program under P.L.1997, c.272 (C.30:4I-1 et
38 seq.).

39

40 5. The exercise of joint negotiation rights by two or more
41 competing physicians who are practicing in the service area of a health
42 benefits plan pursuant to sections 2 and 4 of this act shall conform to
43 the following criteria:

44 a. the physicians may communicate with each other concerning any
45 contractual term or condition to be negotiated with the health benefits
46 plan;

1 b. the physicians may communicate with the physicians'
2 representative authorized to negotiate on their behalf with the health
3 benefits plan concerning any contractual term or condition;

4 c. the physicians' representative shall be the sole party authorized
5 to negotiate with the health benefits plan on behalf of the physicians
6 as a group;

7 d. the physicians may, at the option of each physician, agree to be
8 bound by the terms and conditions negotiated by the physicians'
9 representative; and

10 e. when communicating or negotiating with a physicians'
11 representative, a health benefits plan may offer different contractual
12 terms or conditions to, or may contract with, individual competing
13 physicians.

14

15 6. A person or entity which proposes to act as a physicians'
16 representative shall satisfy the following requirements:

17 a. Before entering into negotiations with a health benefits plan on
18 behalf of two or more competing physicians over a contractual term
19 or condition, the physicians' representative shall submit to the
20 Attorney General, for his approval pursuant to section 7 of this act, on
21 a form and in a manner prescribed by the Attorney General, a report
22 which identifies:

23 (1) the representative's name and business address;

24 (2) the names and business addresses of each physician who will be
25 represented by the identified representative;

26 (3) the ratio of the physicians requesting joint representation to the
27 total number of physicians who are practicing within the geographic
28 service area of the health benefits plan;

29 (4) the health benefits plan with which the representative proposes
30 to enter into negotiations on behalf of the identified physicians;

31 (5) the intended subject matter of the proposed negotiations with
32 the identified health benefits plan;

33 (6) the representative's plan of operation and procedures to ensure
34 compliance with the provisions of this act;

35 (7) the anticipated effect of the proposed joint negotiations on the
36 quality and availability of health care among covered persons; and

37 (8) the anticipated benefits of a contract between the identified
38 physicians and health benefits plan.

39 The physicians' representative, upon submitting the report, shall pay
40 a fee to the Attorney General in an amount, as determined by the
41 Attorney General, which shall be reasonable and necessary to cover
42 the costs associated with carrying out the provisions of this act.

43 b. After the physicians' representative and the health benefits plan
44 identified pursuant to subsection a. of this section have reached an
45 agreement on the contractual terms or conditions that were the subject
46 matter of their negotiations, the physicians' representative shall submit

1 to the Attorney General, for his approval in accordance with the
2 provisions of section 7 of this act, a copy of the proposed contract
3 between the physicians identified pursuant to subsection a. of this
4 section and the health benefits plan, as well as any plan of action which
5 the physicians' representative and the health benefits plan may formally
6 agree to for the purpose of implementing the terms and conditions of
7 the contract.

8 c. Within 14 days after a health benefits plan notifies a physicians'
9 representative of its decision to decline or terminate negotiations
10 entered into pursuant to this act, or after the date that a physicians'
11 representative requests that a health benefits plan enter into such
12 negotiations to which request the plan fails to respond, the physicians'
13 representative shall report to the Attorney General that the
14 negotiations have ended, on a form and in a manner to be prescribed
15 by the Attorney General. The physicians' representative may resume
16 negotiations with the health benefits plan no later than 60 days after
17 reporting to the Attorney General that the negotiations have ended, on
18 the basis of the report submitted to the Attorney General pursuant to
19 subsection a. of this section and approved by the Attorney General in
20 accordance with the provisions of section 7 of this act. After that
21 date, the physicians' representative shall be required to submit a new
22 report and pay an additional fee to the Attorney General pursuant to
23 subsection a. of this section, in order to engage in negotiations with
24 the health benefits plan under this act.

25
26 7. a. The Attorney General shall provide written approval or
27 disapproval of a report or a proposed contract furnished by a
28 physicians' representative pursuant to section 6 of this act no later than
29 30 days after receipt of the report or proposed contract, as applicable.
30 If the Attorney General fails to provide written approval or
31 disapproval within this time period, the physicians' representative may
32 petition a court of competent jurisdiction for an order to require the
33 Attorney General to take such action. If the Attorney General
34 disapproves the report or the proposed contract, he shall forward a
35 written explanation of any deficiencies therein to the physicians'
36 representative along with a statement of the specific remedial measures
37 by which those deficiencies may be corrected. A physicians'
38 representative shall not engage in negotiations with a health benefits
39 plan over any contractual term or condition unless the report furnished
40 by the physicians' representative has been approved in writing by the
41 Attorney General, nor shall a proposed contract between two or more
42 competing physicians and a health benefits plan be implemented unless
43 the Attorney General has approved the contract.

44 b. The Attorney General shall approve a report or a proposed
45 contract furnished by a physicians' representative pursuant to section
46 6 of this act if the Attorney General determines that the report or

1 proposed contract demonstrates that the benefits which are likely to
2 result from the proposed joint negotiations over a contractual term or
3 condition or the proposed contract, as applicable, outweigh the
4 disadvantages attributable to a reduction in competition that may
5 result from the proposed joint negotiations. In making his
6 determination, the Attorney General shall consider physician
7 distribution by specialty and its effect on competition in the geographic
8 service area of the health benefits plan. The Attorney General shall
9 not approve a report furnished by a physicians' representative pursuant
10 to section 6 of this act if the physicians' representative proposes to
11 engage in negotiations with a health benefits plan on behalf of more
12 than 10% of the total number of physicians practicing in the
13 geographic service area of the health benefits plan, unless the Attorney
14 General determines, consistent with the provisions of this act, that
15 conditions relating to the quality and availability of health care among
16 covered persons in the geographic service area of the health benefits
17 plan support the inclusion of a higher percentage of practicing
18 physicians in those joint negotiations.

19 c. The Attorney General's written approval of a report which is
20 furnished by a physicians' representative under section 6 of this act
21 shall be effective for all subsequent negotiations between the
22 physicians' representative and the identified health benefits plan,
23 subject to the provisions of subsection c. of section 6 of this act.

24

25 8. a. The provisions of this act shall not be construed to permit two
26 or more physicians to:

27 (1) jointly engage in a coordinated cessation, reduction or limitation
28 of the health care services which they provide;

29 (2) meet or communicate in order to jointly negotiate a requirement
30 that at least one of the physicians, as a condition of participating in a
31 health benefits plan, be allowed to participate in all of the products
32 offered by the health benefits plan; or

33 (3) jointly negotiate with a health benefits plan to exclude, limit or
34 otherwise restrict a non-physician health care provider from
35 participating in a health benefits plan based substantially on the fact
36 that the health care provider is not a physician, unless that exclusion,
37 limitation or restriction is otherwise permitted by law.

38 b. Prior to entering into negotiations with a health benefits plan on
39 behalf of two or more competing physicians over a contractual term
40 or condition, a physicians' representative shall notify the physicians in
41 writing of the provisions of this section and advise them as to their
42 potential legal liability if they engage in a joint action that is not
43 authorized under this act.

1 9. The Attorney General, in consultation with the Commissioners
2 of Banking and Insurance and Health and Senior Services and pursuant
3 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
4 et seq.), shall adopt rules and regulations to effectuate the purposes of
5 this act.

6
7 10. This act shall take effect 90 days after enactment, except that
8 the Attorney General, in consultation with the Commissioners of
9 Banking and Insurance and Health and Senior Services, may take such
10 anticipatory administrative action in advance as shall be necessary to
11 implement the act.

12
13
14 STATEMENT
15

16 The purpose of this bill is to provide physicians with the right to
17 engage in joint negotiations over the terms and conditions of their
18 contracts with health benefits plans. The bill is modeled generally after
19 legislation which was enacted into law in Texas (Senate Bill No. 1468,
20 on June 20, 1999).

21 A "physician" is defined in the bill as a person licensed to practice
22 medicine or surgery, including podiatric medicine, by the State Board
23 of Medical Examiners.

24 The bill permits physicians who are practicing in the geographic
25 service area of a health benefits plan to jointly negotiate with the plan,
26 through a physicians' representative who is approved by the Attorney
27 General to act on their behalf, over the terms and conditions of a
28 proposed contract, which, if agreed to by the parties to the
29 negotiation, must be approved by the Attorney General before being
30 implemented. These terms and conditions include:

- 31 C practices and procedures to assess and improve the delivery of
- 32 effective, cost-efficient preventive health care services;
- 33 C practices and procedures to encourage early detection and effective,
- 34 cost-efficient management of diseases and illnesses in children;
- 35 C practices and procedures to assess and improve the delivery of
- 36 women's medical and health care;
- 37 C clinical criteria for effective, cost-efficient disease management
- 38 programs;
- 39 C practices and procedures to encourage and promote patient
- 40 education and treatment compliance;
- 41 C practices and procedures to identify, correct and prevent potentially
- 42 fraudulent activities;
- 43 C practices and procedures for the effective, cost-efficient use of
- 44 outpatient surgery;
- 45 C clinical practice guidelines and coverage criteria;

1 C administrative procedures, including, but not limited to, methods
2 and timing of payment to physicians for services;
3 C procedures for resolving disputes between physicians and the plan;
4 C patient referral procedures;
5 C the formulation and application of physician reimbursement
6 methodology;
7 C quality assurance activities;
8 C utilization management procedures;
9 C physician selection and termination criteria used by the plan; and
10 C the inclusion or alteration of a contractual term or condition with
11 the plan, except when the inclusion or alteration is required by a
12 federal or State regulation regarding that term or condition.

13 In addition, the bill provides that the following terms and conditions
14 of a proposed contract may be subject to such joint negotiations if the
15 Attorney General, in consultation with the Commissioners of Banking
16 and Insurance and Health and Senior Services, finds that the health
17 benefits plan has substantial market power within its service area and
18 that any of the terms or conditions pose an actual or potential threat
19 to the quality and availability of health care among covered persons:

20 C the fee or price for a service provided by a physician, including
21 those determined by the application of a reimbursement
22 methodology;
23 C the conversion factors in a resource-based relative value scale or
24 similar reimbursement methodology;
25 C the amount of a discount on the price of a physician service; and
26 C the dollar amount of capitation or fixed payment for physician
27 services provided to a covered person.

28 The bill stipulates that a physicians' representative shall not enter
29 into negotiations with a health benefits plan on behalf of more than
30 10% of the total number of physicians practicing in the geographic
31 service area of the health benefits plan, unless the Attorney General
32 determines, consistent with the provisions of this bill, that conditions
33 relating to the quality and availability of health care among covered
34 persons in the geographic service area of the plan support the inclusion
35 of a higher percentage of practicing physicians in those joint
36 negotiations.

37 Also, the bill explicitly prohibits physicians from:

38 C jointly engaging in a coordinated cessation, reduction or limitation
39 of health care services;
40 C meeting or communicating in order to jointly negotiate a
41 requirement that at least one of the physicians, as a condition of
42 participating in a health benefits plan, be allowed to participate in
43 all of the products offered by the health benefits plan; or
44 C jointly negotiating with a health benefits plan to exclude, limit or
45 otherwise restrict a non-physician health care provider from
46 participating in a health benefits plan based substantially on the fact

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- 1 that the health care provider is not a physician, unless that
- 2 exclusion, limitation or restriction is otherwise permitted by law.

SENATE, No. 1098

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED MARCH 16, 2000

Sponsored by:

Senator JOHN J. MATHEUSSEN

District 4 (Camden and Gloucester)

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

Co-Sponsored by:

Senators Adler and Bennett

SYNOPSIS

"Health Care Provider Joint Negotiation Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/13/2000)

1 AN ACT authorizing health care providers to enter into joint
2 negotiations with health insurance carriers and supplementing Title
3 52 of the Revised Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the "Health Care
9 Provider Joint Negotiation Act."

10

11 2. The Legislature finds and declares that:

12 a. Active, robust and fully competitive markets for health care
13 services provide the best opportunity for the residents of this State to
14 receive high-quality health care services at an appropriate cost;

15 b. A substantial amount of health care services in this State is
16 purchased for the benefit of patients by health insurance carriers
17 engaged in the financing of health care services or is otherwise
18 delivered subject to the terms of agreements between carriers and
19 health care providers;

20 c. Health insurance carriers are able to control the flow of patients
21 to health care providers through compelling financial incentives for
22 patients in their health benefits plans to utilize only the services of
23 providers with whom the carriers have contracted;

24 d. Carriers also control the health care services rendered to patients
25 through utilization management and other managed care tools and
26 associated coverage and payment policies;

27 e. The power of health insurance carriers in the markets of this
28 State for health care services has become great enough to create a
29 competitive imbalance, reducing levels of competition and threatening
30 the availability of high-quality, cost-effective health care;

31 f. In many areas of this State, the health care insurance market is
32 dominated by one or two health insurance carriers, with some carriers
33 controlling over 50% of an area's market;

34 g. Carriers are often able to virtually dictate the terms of the
35 contracts that they offer physicians and other health care providers and
36 commonly offer these contracts on a take-it-or-leave-it basis;

37 h. The power of carriers to unilaterally impose provider contract
38 terms jeopardizes the ability of physicians and other health care
39 providers to deliver the superior quality health care services
40 traditionally available in this State;

41 i. Physicians and other health care providers do not have sufficient
42 market power to reject unfair provider contract terms offered by
43 carriers that impede their ability to deliver medically appropriate care
44 without undue delay or difficulties;

45 j. Inadequate reimbursement and other unfair payment terms offered
46 by carriers adversely affect the quality of patient care and access to

1 care by reducing the resources that health care providers can devote
2 to patient care and decreasing the time that providers are able to spend
3 with their patients;

4 k. Inequitable reimbursement and other unfair payment terms also
5 endanger the health care infrastructure and medical progress by
6 diverting capital needed for reinvestment in the health care delivery
7 system, curtailing the purchase of state-of-the-art technology, the
8 pursuit of medical research, and expansion of medical services, all to
9 the detriment of the residents of this State;

10 l. The inevitable collateral reduction and migration of the health
11 care work force will also have negative consequences for the economy
12 of this State;

13 m. Empowering independent health care providers to jointly
14 negotiate with health insurance carriers as provided in this act will help
15 restore the competitive balance and improve competition in the
16 markets for health care services in this State, thereby providing
17 benefits for consumers, health care providers and less dominant
18 carriers;

19 n. This act is necessary and proper, and constitutes an appropriate
20 exercise of the authority of this State to regulate the business of
21 insurance and the delivery of health care services;

22 o. The pro-competitive and other benefits of the joint negotiations
23 and related joint activity authorized by this act, including, but not
24 limited to, restoring the competitive balance in the market for health
25 care services, protecting access to quality patient care, promoting the
26 health care infrastructure and medical progress, and improving
27 communications, outweigh any potential anti-competitive effects of
28 this act; and

29 p. It is the intention of the Legislature to authorize independent
30 health care providers to jointly negotiate with health insurance carriers
31 and to qualify such joint negotiations and related joint activities for the
32 State-action exemption to the federal antitrust laws through the
33 articulated State policy and active supervision provided under this act.
34

35 3. As used in this act:

36 "Carrier" means an insurance company, health service corporation,
37 hospital service corporation, medical service corporation or health
38 maintenance organization authorized to issue health benefits plans in
39 this State.

40 "Carrier affiliate" means a carrier that is affiliated with another
41 entity by either the carrier or entity having a 5% or greater, direct or
42 indirect, ownership or investment interest in the other through equity
43 or debt, or by other means.

44 "Commissioner" means the Commissioner of Banking and
45 Insurance.

46 "Covered person" means a person on whose behalf a carrier offering

1 the plan is obligated to pay benefits or provide services pursuant to the
2 health benefits plan.

3 "Covered service" means a health care service provided to a
4 covered person under a health benefits plan for which the carrier is
5 obligated to pay benefits or provide services.

6 "Health benefits plan" means a benefits plan which pays or provides
7 hospital and medical expense benefits for covered services, and is
8 delivered or issued for delivery in this State by or through a carrier,
9 except in the case of a self-funded health benefits plan. For the
10 purposes of this act, health benefits plan shall not include the following
11 plans, policies or contracts: Medicare supplement coverage and risk
12 contracts, accident only, specified disease or other limited benefit,
13 credit, disability, long-term care, CHAMPUS supplement coverage,
14 coverage arising out of a workers' compensation or similar law,
15 automobile medical payment insurance, personal injury protection
16 insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.),
17 dental or vision care coverage only, or hospital expense or
18 confinement indemnity coverage only.

19 "Health care provider" means an individual or entity which, acting
20 within the scope of its licensure or certification, provides a covered
21 service defined by the health benefits plan, and includes, but is not
22 limited to, a physician and other health care professionals licensed
23 pursuant to Title 45 of the Revised Statutes, and a hospital and other
24 health care facilities licensed pursuant to Title 26 of the Revised
25 Statutes, and medical equipment suppliers.

26 "Health care service" means services for the diagnosis, prevention,
27 treatment, cure or relief of a health condition, injury, disease or illness,
28 including, but not limited to: the professional and technical
29 component of professional services; supplies, drugs and biologicals;
30 diagnostic x-rays, laboratory and other diagnostic tests; preventive
31 screening services and tests, including pap smears and mammograms;
32 x-ray, radium and radioactive isotope therapy; surgical dressings;
33 devices for the reduction of fractures; durable medical equipment;
34 braces; trusses; artificial limbs and eyes; dialysis services; home health
35 services; and hospital and other health care facility services.

36 "Health maintenance organization" means a health maintenance
37 organization operating pursuant to P.L.1973, c.337 (C.26:2J-1 et
38 seq.).

39 "Joint negotiation" means negotiation with a carrier by two or more
40 independent health care providers acting together as part of a formal
41 group or other entity.

42 "Joint negotiation representative" means a representative selected
43 by two or more independent health care providers to engage in joint
44 negotiations with a carrier on their behalf.

45 "Point-of-service plan" means a health benefits plan that allows a
46 covered person to receive covered services from out-of-network

1 health care providers but may require that a subscriber pay a higher
2 deductible or copayment and higher premium for the plan.

3 "Preferred provider organization" means a health benefits plan other
4 than a health maintenance organization or a point-of-service plan that
5 integrates the financing and delivery of appropriate health care services
6 to covered persons by arrangements with members of the provider
7 network and financial incentives for covered persons to use those
8 health care providers.

9 "Provider contract" means an agreement between a health care
10 provider and a carrier setting forth the terms and conditions under
11 which the provider is to deliver health care services to covered persons
12 of the carrier. This term does not include employment contracts
13 between a carrier and a health care professional.

14 "Provider network" means a group of health care providers who
15 have provider contracts with a carrier.

16 "Self-funded health benefits plan" means a health benefits plan that
17 provides for the assumption of the cost, or spreads the risk of loss,
18 resulting from health care services provided to covered persons by an
19 employer, union or other sponsor, substantially out of the current
20 revenues, assets or other funds of the sponsor.

21 "Subscriber" means, in the case of a group contract, a person whose
22 employment or other status, except family status, is the basis for
23 eligibility for enrollment by the carrier or, in the case of an individual
24 contract, the person in whose name the contract is issued.

25 "Third party administrator" means an entity that provides utilization
26 management, provider network credentialing or other administrative
27 services for a carrier or a self-funded health benefits plan.

28 "Utilization management" means a system for reviewing the
29 appropriate and efficient allocation of health care services under a
30 health benefits plan according to specified guidelines, in order to
31 recommend or determine whether, or to what extent, a health care
32 service given or proposed to be given to a covered person should or
33 will be reimbursed, covered, paid for, or otherwise provided under the
34 health benefits plan. The system may include: preadmission
35 certification, the application of practice guidelines, continued stay
36 review, discharge planning, preauthorization of ambulatory care
37 procedures and retrospective review.

38

39 4. Independent health care providers may jointly negotiate with a
40 carrier and engage in related joint activity, as provided in sections 7
41 and 8 of this act, regarding non-fee-related matters which may affect
42 patient care, including, but not limited to any of the following:

43 a. the definition of medical necessity and other conditions of
44 coverage;

45 b. utilization management criteria and procedures;

46 c. clinical practice guidelines;

- 1 d. preventive care and other medical management policies;
- 2 e. patient referral standards and procedures, including, but not
- 3 limited to, those applicable to out-of-network referrals;
- 4 f. drug formularies and standards and procedures for prescribing
- 5 off-formulary drugs;
- 6 g. quality assurance programs;
- 7 h. respective health care provider and carrier liability for the
- 8 treatment or lack of treatment of covered persons;
- 9 i. the methods and timing of payments, including, but not limited
- 10 to, interest and penalties for late payments;
- 11 j. other administrative procedures, including, but not limited to,
- 12 covered persons eligibility verification systems and claim
- 13 documentation requirements;
- 14 k. credentialing standards and procedures for the selection,
- 15 retention and termination of participating health care providers;
- 16 l. mechanisms for resolving disputes between the carrier and health
- 17 care providers, including, but not limited to, the appeals process for
- 18 utilization management and credentialing determinations; or
- 19 m. the health benefits plans sold or administered by the carrier in
- 20 which the health care providers are required to participate.
- 21
- 22 5. a. When a carrier has substantial market power over independent
- 23 health care providers, the providers may jointly negotiate with the
- 24 carrier and engage in related joint activity, as provided in sections 7
- 25 and 8 of this act regarding fees and fee-related matters, including, but
- 26 not limited to, any of the following:
 - 27 (1) the amount of payment or the methodology for determining the
 - 28 payment for a health care service;
 - 29 (2) the conversion factor for a resource-based relative value scale
 - 30 or similar reimbursement methodology for health care services;
 - 31 (3) the amount of any discount on the price of a health care
 - 32 service;
 - 33 (4) the procedure code or other description of a health care service
 - 34 covered by a payment;
 - 35 (5) the amount of a bonus related to the provision of health care
 - 36 services or a withholding from the payment due for a health care
 - 37 service; or
 - 38 (6) the amount of any other component of the reimbursement
 - 39 methodology for a health care service.
- 40 b. A carrier has substantial market power over health care
- 41 providers when:
 - 42 (1) the carrier's market share in the comprehensive health care
 - 43 insurance market or a relevant segment of that market, alone or in
 - 44 combination with the market shares of one or more carrier affiliates,
 - 45 exceeds either 15% of the total number of covered persons in the
 - 46 geographic service area of the providers seeking to jointly negotiate

1 or 25,000 covered persons, whichever is less; or

2 (2) the Attorney General determines that the market power of the
3 carrier in the relevant product and geographic markets for the services
4 of the providers seeking to jointly negotiate significantly exceeds the
5 countervailing market power of the providers acting individually.

6 c. As used in this act:

7 (1) "Comprehensive health care insurance market" includes all
8 health benefits plans which provide comprehensive coverage, alone or
9 in combination with other plans sold together as a package, including,
10 but not limited to, indemnity, health maintenance organization,
11 preferred provider organization and point-of-service plans, and
12 including self-funded health benefits plans which provide
13 comprehensive coverage; and

14 (2) "Relevant market segments in the comprehensive health care
15 insurance market" includes the following:

16 (a) carrier health benefits plans and self-funded health benefits
17 plans;

18 (b) within the carrier product category, private health insurance,
19 Medicare health maintenance organization contracts and preferred
20 provider organization and point-of-service plans and Medicaid health
21 maintenance organization contracts;

22 (c) within the private health insurance category, indemnity, health
23 maintenance organization, preferred provider organization and point-
24 of-service plans; and

25 (d) such other segments as the Attorney General determines are
26 appropriate for purposes of determining whether a carrier has
27 substantial market power.

28 d. (1) By March 31 of each year, the Commissioner of Banking
29 and Insurance shall calculate the number of covered persons of each
30 carrier and its affiliates in the comprehensive health care insurance
31 market and in each relevant market segment for each county. The
32 commissioner shall make these calculations by averaging quarterly data
33 from the preceding year unless the commissioner determines that it
34 would be more appropriate to use other data and information. The
35 commissioner may recalculate the number of covered persons earlier
36 than the required annual recalculation when the commissioner deems
37 it appropriate to do so.

38 (2) Recipients of benefits under Medicare, Medicaid or other
39 governmental programs shall not be counted as covered persons in the
40 health care insurance market unless they receive their governmental
41 program coverage through a health maintenance organization or
42 another carrier health benefits plan.

43 (3) When calculating the market power of a carrier or carrier
44 affiliate that has third party administrator products, the covered lives
45 of the carriers and self-funded health benefits plans for whom the
46 carrier or carrier affiliate provides administrative services shall be

1 treated as the covered persons of the carrier or carrier affiliate.

2 (4) The commissioner's calculation of covered persons shall be
3 used for purposes of determining the market power of carriers in the
4 comprehensive health care insurance market from the date of the
5 determination until the next annual determination or until the
6 commissioner recalculates the determination, whichever is earlier.

7 (5) In cases where the relevant geographic market is multiple
8 counties, the commissioner's calculations for those counties shall be
9 aggregated when counting the covered persons of the carrier whose
10 market power is being evaluated.

11 (6) The commissioner shall collect and investigate information
12 necessary to calculate the covered persons of carriers and their
13 affiliates.

14

15 6. The following requirements shall apply to the exercise of joint
16 negotiation rights and related activity under this act:

17 a. Health care providers shall select the members of their joint
18 negotiation group by mutual agreement.

19 b. Health care providers shall designate a joint negotiation
20 representative as the sole party authorized to negotiate with the carrier
21 on behalf of the health care providers as a group.

22 c. Health care providers may communicate with each other and
23 their joint negotiation representative with respect to the matters to be
24 negotiated with the carrier.

25 d. Health care providers may agree upon a proposal to be
26 presented by their joint negotiation representative to the carrier.

27 e. Health care providers may agree to be bound by the terms and
28 conditions negotiated by their joint negotiation representative.

29 f. The health care providers' joint negotiation representative may
30 provide the health care providers with the results of negotiations with
31 the carrier and an evaluation of any offer made by the carrier.

32 g. The health care providers' joint negotiation representative may
33 reject a contract proposal by a carrier on behalf of the health care
34 providers as long as the health care providers remain free to
35 individually contract with the carrier.

36 h. The health care providers' joint negotiation representative shall
37 advise the health care providers of the provisions of this act and shall
38 inform the health care providers of the potential for legal action
39 against health care providers who violate federal antitrust law.

40 i. Health care providers may not negotiate the inclusion or
41 alteration of terms and conditions to the extent the terms or conditions
42 are required or prohibited by federal or State statute or regulation.
43 This subsection shall not be construed to limit the right of health care
44 providers to jointly petition federal or State government for a change
45 in the statute or regulation.

1 7. a. Before engaging in any joint negotiation with a carrier, health
2 care providers shall obtain the Attorney General's approval to proceed
3 with the negotiations by submitting to the Attorney General a petition
4 seeking approval, which shall include:

5 (1) the name and business address of the health care providers'
6 joint negotiation representative;

7 (2) the names and business addresses of the health care providers
8 petitioning to jointly negotiate;

9 (3) the name and business address of any carrier with which the
10 petitioning providers seek to jointly negotiate;

11 (4) the proposed subject matter of the negotiations or discussions
12 with the carrier;

13 (5) the proportionate relationship of the health care providers to
14 the total population of health care providers in the relevant geographic
15 service area of the providers, by providers, provider type and
16 specialty;

17 (6) in the case of a petition seeking approval of joint negotiations
18 regarding one or more fee or fee-related terms, a statement of the
19 reasons why the carrier has substantial market power over the health
20 care providers;

21 (7) a statement of the pro-competitive and other benefits of the
22 proposed negotiations;

23 (8) the health care provider's joint negotiation representative's plan
24 of operation and procedures to ensure compliance with this act; and

25 (9) such other data, information and documents as the petitioners
26 desire to submit in support of their petition.

27 b. The health care providers shall supplement a petition submitted
28 under subsection a. of this section as new information becomes
29 available that indicates that the subject matter of the proposed
30 negotiations with the carrier has or will materially change and shall
31 obtain the Attorney General's approval of material changes. The
32 petition seeking approval shall include:

33 (1) the Attorney General's file reference for the original petition for
34 approval of joint negotiations;

35 (2) the proposed new subject matter;

36 (3) the information required by paragraphs (6) and (7) of
37 subsection a. of this section with respect to the proposed new subject
38 matter; and

39 (4) such other data, information and documents as the petitioners
40 desire to submit in support of their petition.

41 c. No provider contract terms negotiated under this act shall be
42 effective until the terms are approved by the Attorney General. The
43 petition seeking approval shall be jointly submitted to the Attorney
44 General by the health care providers and the carrier who are parties to
45 the contract. The petition shall include:

46 (1) the Attorney General's file reference for the original petition for

1 approval of joint negotiations;

2 (2) the negotiated provider contract terms;

3 (3) a statement of the pro-competitive and other benefits of the
4 negotiated provider contract terms; and

5 (4) such other data, information and documents as the petitioners
6 desire to submit in support of their petition.

7 d. Joint negotiations approved under this act may continue until the
8 carrier notifies the joint negotiation representative for the health care
9 providers that it declines to negotiate or is terminating negotiations.
10 If the carrier notifies the joint negotiation representative for the health
11 care providers that it desires to resume negotiations within 60 days of
12 the end of prior negotiations, the health care providers may renew the
13 previously approved negotiations without obtaining a separate
14 approval of the renewal from the Attorney General.

15

16 8. a. The Attorney General shall either approve or disapprove a
17 petition under section 7 of this act within 30 days after the filing. If
18 disapproved, the Attorney General shall furnish a written explanation
19 of any deficiencies along with a statement of specific remedial
20 measures as to how such deficiencies may be corrected.

21 b. (1) The Attorney General shall approve a petition under
22 subsections a. and b. of section 7 of this act if:

23 (i) the pro-competitive and other benefits of the joint negotiations
24 outweigh any anti-competitive effects; and

25 (ii) in the case of a petition seeking approval to jointly negotiate
26 one or more fee or fee-related terms, the carrier has substantial market
27 power over the health care providers.

28 (2) The Attorney General shall approve a petition under subsection
29 c. of section 7 of this act if:

30 (i) the pro-competitive and other benefits of the contract terms
31 outweigh any anti-competitive effects; and

32 (ii) the contract terms are consistent with other applicable
33 statutes and regulations.

34 (3) The pro-competitive and other benefits of joint negotiations or
35 negotiated provider contract terms may include, but shall not be
36 limited to:

37 (i) restoration of the competitive balance in the market for health
38 care services;

39 (ii) protections for access to quality patient care;

40 (iii) promotion of the health care infrastructure and medical
41 advancement; and

42 (iv) improved communications between health care providers
43 and carriers.

44 (4) When weighing the anti-competitive effects of provider
45 contract terms, the Attorney General may consider whether the terms:

46 (i) provide for excessive payments; or

1 (ii) contribute to the escalation of the cost of providing health
2 care services.

3 c. For the purpose of enabling the Attorney General to make the
4 findings and determinations required by this section, the Attorney
5 General may require the submission of such supplemental information
6 as the Attorney General deems necessary for that purpose.

7

8 9. a. In the case of a petition under subsections a. or b. of section
9 7 of this act, the Attorney General shall notify the carrier of the
10 petition and provide the carrier with the opportunity to submit written
11 comments within a specified time frame that does not extend beyond
12 the date by which the Attorney General is required to act on the
13 petition.

14 b. (1) Except as provided in subsection a. of this section, the
15 Attorney General shall not be required to provide public notice of a
16 petition under subsections a., b. or c. of section 7 of this act in order
17 to hold a public hearing on the petition or to otherwise accept public
18 comment on the petition.

19 (2) The Attorney General may, at his discretion, publish notice of
20 a petition for approval of provider contract terms in the New Jersey
21 Register and receive written comment from interested persons, so long
22 as the opportunity for public comment does not prevent the Attorney
23 General from acting on the petition within the time period set forth in
24 this act.

25

26 10. a. Within 30 days from the mailing by the Attorney General of
27 a notice of disapproval of a petition under section 7 of this act, the
28 petitioners may make a written application to the Attorney General for
29 a hearing.

30 b. Upon receipt of a timely written application for a hearing, the
31 Attorney General shall schedule and conduct a hearing in accordance
32 with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
33 1 et seq.). The hearing shall be held within 30 days of the application
34 unless the petitioner seeks an extension.

35 c. If the Attorney General does not issue a written approval or
36 disapproval of a petition under section 7 of this act within the required
37 time period, the parties to the petition shall have the right to petition
38 the court for a mandamus order requiring the Attorney General to
39 approve or disapprove the petition.

40 d. The sole parties with respect to any petition under section 7 of
41 this act shall be the petitioners and the Attorney General.
42 Notwithstanding any other provision of law to the contrary, the
43 Attorney General shall not be required to treat any other person as a
44 party and no other person shall be entitled to appeal the Attorney
45 General's determination.

1 11. a. All information and documents and copies thereof obtained
2 by or disclosed to the Attorney General or any other person in a
3 petition under section 7 of this act, or pursuant to a request for
4 supplemental information under subsection c. of section 8 of this act,
5 shall be treated confidentially, shall not be subject to subpoena and
6 shall not be made public or otherwise disclosed by the Attorney
7 General or any other person without the written consent of the
8 petitioners to whom the information pertains, except as provided in
9 subsection b. of this section.

10 b. (1) In the case of a petition under subsections a. or b. of section
11 7 of this act, the Attorney General may disclose the information
12 required to be submitted pursuant to paragraphs (1) through (4) of
13 subsection a. and paragraphs (1) and (2) of subsection b. of section 7
14 of this act.

15 (2) The Attorney General may disclose provider contracts
16 negotiated under this act provided that the Attorney General removes
17 or redacts those provider contract provisions that contain payment
18 rates and fees. The Attorney General may disclose payment rates and
19 fees to the commissioner, the insurance department of another state,
20 a law enforcement official of this State or any other state or agency of
21 the federal government, so long as the agency or office receiving the
22 information agrees in writing to treat the information confidentially
23 and in a matter consistent with this act.

24

25 12. A carrier shall negotiate in good faith with health care
26 providers regarding the terms of provider contracts pursuant to this
27 act.

28

29 13. Nothing contained in this act shall be construed to:

30 a. prohibit or restrict activity by health care providers that is
31 sanctioned under federal or State law;

32 b. affect governmental approval of, or otherwise restrict activity
33 by, health care providers that is not prohibited under federal antitrust
34 law;

35 c. require approval of provider contract terms to the extent that the
36 terms are exempt from State regulation under section 514(a) of the
37 "Employee Retirement Income Security Act of 1974," Pub.L.93-406
38 (29 U.S.C. s.1144(a)); or

39 d. expand a health care provider's scope of practice or require a
40 carrier to contract with any type or specialty of health care provider.

41

42 14. The Attorney General, in consultation with the Commissioners
43 of Banking and Insurance and Health and Senior Services and pursuant
44 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
45 et seq.), shall adopt rules and regulations to effectuate the purposes of
46 this act.

1 15. This act shall take effect on the 60th day after enactment;
2 however, the Attorney General, in consultation with the
3 Commissioners of Banking and Insurance and Health and Senior
4 Services, may take such anticipatory administrative action in advance
5 as is necessary to implement the act.

6
7
8 STATEMENT

9
10 This bill, which is designated the "Health Care Provider Joint
11 Negotiation Act," would permit independent physicians and other
12 health care providers to engage in joint negotiations over the terms
13 and conditions of their contracts with health insurance carriers. The
14 bill is generally modeled after Pennsylvania Senate Bill No. 1052 of
15 1999.

16 Specifically, the bill provides that independent health care providers
17 may jointly negotiate with a carrier and engage in related joint activity,
18 as provided in the bill, regarding non-fee-related matters which may
19 affect patient care, including, but not limited to any of the following:

- 20 -- the definition of medical necessity and other conditions of
21 coverage;
22 -- utilization management criteria and procedures;
23 -- clinical practice guidelines;
24 -- preventive care and other medical management policies;
25 -- patient referral standards and procedures, including, but not
26 limited to, those applicable to out-of-network referrals;
27 -- drug formularies and standards and procedures for prescribing
28 off-formulary drugs;
29 -- quality assurance programs;
30 -- respective health care provider and carrier liability for the
31 treatment or lack of treatment of covered persons;
32 -- the methods and timing of payments, including, but not
33 limited to, interest and penalties for late payments;
34 -- other administrative procedures, including, but not limited to,
35 covered persons eligibility verification systems and claim
36 documentation requirements;
37 -- credentialing standards and procedures for the selection,
38 retention and termination of participating health care providers;
39 -- mechanisms for resolving disputes between the carrier and health
40 care providers, including, but not limited to, the appeals process for
41 utilization management and credentialing determinations; or
42 -- the health benefits plans sold or administered by the carrier in
43 which the health care providers are required to participate.

44 The bill further provides that when a carrier has substantial market
45 power over independent health care providers, the providers may
46 jointly negotiate with the carrier and engage in related joint activity as

1 provided in the bill regarding fees and fee-related matters, including,
2 but not limited to, any of the following:

3 -- the amount of payment or the methodology for determining the
4 payment for a health care service;

5 -- the conversion factor for a resource-based relative value scale or
6 similar reimbursement methodology for health care services;

7 -- the amount of any discount on the price of a health care service;

8 -- the procedure code or other description of a health care service
9 covered by a payment;

10 -- the amount of a bonus related to the provision of health care
11 services or a withholding from the payment due for a health care
12 service; or

13 -- the amount of any other component of the reimbursement
14 methodology for a health care service.

15 The bill provides for the following requirements in regard to the
16 exercise of joint negotiation rights and related activity:

17 -- Health care providers shall select the members of their joint
18 negotiation group by mutual agreement;

19 -- Health care providers shall designate a joint negotiation
20 representative as the sole party authorized to negotiate with the carrier
21 on behalf of the health care providers as a group;

22 -- Health care providers may communicate with each other and their
23 joint negotiation representative with respect to the matters to be
24 negotiated with the carrier;

25 -- Health care providers may agree upon a proposal to be presented
26 by their joint negotiation representative to the carrier;

27 -- Health care providers may agree to be bound by the terms and
28 conditions negotiated by their joint negotiation representative;

29 -- The health care providers' joint negotiation representative may
30 provide the health care providers with the results of negotiations with
31 the carrier and an evaluation of any offer made by the carrier;

32 -- The health care providers' joint negotiation representative may
33 reject a contract proposal by a carrier on behalf of the health care
34 providers as long as the health care providers remain free to
35 individually contract with the carrier;

36 -- The health care providers' joint negotiation representative shall
37 advise the health care providers of the provisions of this bill and shall
38 inform the health care providers of the potential for legal action
39 against health care providers who violate federal antitrust law; and

40 -- Health care providers may not negotiate the inclusion or
41 alteration of terms and conditions to the extent the terms or conditions
42 are required or prohibited by federal or State statute or regulation;
43 however, this provision shall not be construed to limit the right of
44 health care providers to jointly petition federal or State government
45 for a change in the statute or regulation.

46 From a procedural standpoint, the bill provides that:

1 --before engaging in any joint negotiation with a carrier, health care
2 providers shall obtain the Attorney General's approval to proceed with
3 the negotiations by submitting to the Attorney General a petition
4 seeking approval, which includes the information specified in the bill;

5 --no provider contract terms negotiated under the bill shall be
6 effective until the terms are approved by the Attorney General, and the
7 petition seeking approval shall be jointly submitted to the Attorney
8 General by the health care providers and the carrier who are parties to
9 the contract;

10 --the Attorney General shall approve or disapprove a petition filed
11 pursuant to the bill within 30 days after its filing; and, if disapproved,
12 the Attorney General shall furnish a written explanation of any
13 deficiencies along with a statement of specific remedial measures as to
14 how such deficiencies may be corrected; and

15 --the Attorney General shall approve a petition to allow joint
16 negotiations if the pro-competitive and other benefits of the joint
17 negotiations outweigh any anti-competitive effects; and, in the case of
18 a petition seeking approval to jointly negotiate one or more fee or fee-
19 related terms, the carrier has substantial market power over the health
20 care providers as determined by the Attorney General in a manner
21 specified in the bill; and

22 --the Attorney General shall approve a petition to implement
23 provider contract terms negotiated under the bill if the pro-competitive
24 and other benefits of the contract terms outweigh any anti-competitive
25 effects, and the contract terms are consistent with other applicable
26 statutes and regulations, as determined by the Attorney General
27 according to criteria set forth in the bill.

28 The bill requires that a carrier negotiate in good faith with health
29 care providers regarding the terms of provider contracts pursuant to
30 this bill.

31 Nothing contained in this bill shall be construed to:

32 --prohibit or restrict activity by health care providers that is
33 sanctioned under federal or State law;

34 --prohibit or require governmental approval of, or otherwise restrict
35 activity by, health care providers that is not prohibited under federal
36 antitrust law;

37 --require approval of provider contract terms to the extent that the
38 terms are exempt from State regulation under section 514(a) of the
39 "Employee Retirement Income Security Act of 1974;" or

40 --expand a health care provider's scope of practice or require a
41 carrier to contract with any type or specialty of health care provider.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1033 and 1098

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED NOVEMBER 9, 2000

Sponsored by:

Senator MARTHA W. BARK

District 8 (Atlantic, Burlington and Camden)

Senator DONALD T. DIFRANCESCO

District 22 (Middlesex, Morris, Somerset and Union)

Senator JOHN J. MATHEUSSEN

District 4 (Camden and Gloucester)

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

Co-Sponsored by:

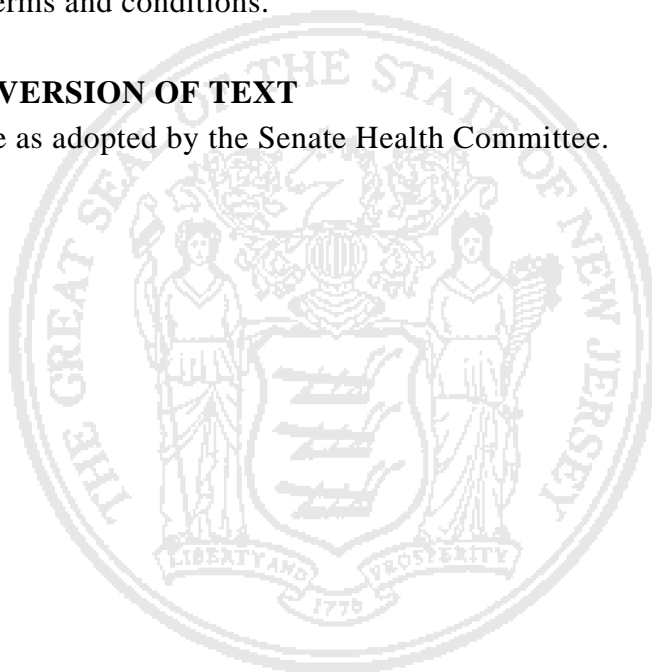
Senators Allen, Gormley, Bennett and Adler

SYNOPSIS

Allows physicians and dentists to jointly negotiate with carriers over contractual terms and conditions.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Health Committee.



1 AN ACT providing for joint negotiations by physicians and dentists
2 with carriers and supplementing Title 52 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. The Legislature finds and declares that:

8 a. Active, robust and fully competitive markets for health care and
9 dental services provide the best opportunity for the residents of this
10 State to receive high-quality health care and dental services at an
11 appropriate cost;

12 b. A substantial amount of health care and dental services in this
13 State is purchased for the benefit of patients by health and dental
14 insurance carriers engaged in the financing of health care and dental
15 services or is otherwise delivered subject to the terms of agreements
16 between carriers and physicians and dentists;

17 c. Carriers are able to control the flow of patients to physicians
18 and dentists through compelling financial incentives for patients in
19 their health and dental benefits plans to utilize only the services of
20 physicians and dentists with whom the carriers have contracted;

21 d. Carriers also control the health care and dental services
22 rendered to patients through utilization management and other
23 managed care tools and associated coverage and payment policies;

24 e. Carriers are often able to virtually dictate the terms of the
25 contracts that they offer physicians and dentists and commonly offer
26 these contracts on a take-it-or-leave-it basis;

27 f. The power of carriers to unilaterally impose provider contract
28 terms jeopardizes the ability of physicians and dentists to deliver the
29 superior quality health care and dental services traditionally available
30 in this State;

31 g. Physicians and dentists do not have sufficient market power to
32 reject unfair provider contract terms offered by carriers that impede
33 their ability to deliver medically appropriate care without undue delay
34 or difficulties;

35 h. Inadequate reimbursement and other unfair payment terms
36 offered by carriers adversely affect the quality of patient care and
37 access to care by reducing the resources that physicians and dentists
38 can devote to patient care and decreasing the time that physicians and
39 dentists are able to spend with their patients;

40 i. Inequitable reimbursement and other unfair payment terms also
41 endanger the health care infrastructure and medical progress by
42 diverting capital needed for reinvestment in the health care delivery
43 system, curtailing the purchase of state-of-the-art technology, the
44 pursuit of medical research, and expansion of medical services, all to
45 the detriment of the residents of this State;

46 j. The inevitable collateral reduction and migration of the health

1 care work force will also have negative consequences for the economy
2 of this State;

3 k. Empowering independent physicians and dentists to jointly
4 negotiate with carriers as provided in this act will help restore the
5 competitive balance and improve competition in the markets for health
6 care and dental services in this State, thereby providing benefits for
7 consumers, physicians and dentists and less dominant carriers;

8 l. This act is necessary and proper, and constitutes an appropriate
9 exercise of the authority of this State to regulate the business of
10 insurance and the delivery of health care and dental services;

11 m. The pro-competitive and other benefits of the joint negotiations
12 and related joint activity authorized by this act, including, but not
13 limited to, restoring the competitive balance in the market for health
14 care services, protecting access to quality patient care, promoting the
15 health care infrastructure and medical progress, and improving
16 communications, outweigh any potential anti-competitive effects of
17 this act; and

18 n. It is the intention of the Legislature to authorize independent
19 physicians and dentists to jointly negotiate with carriers and to qualify
20 such joint negotiations and related joint activities for the State-action
21 exemption to the federal antitrust laws through the articulated State
22 policy and active supervision provided under this act.

23

24 2. As used in this act:

25 "Carrier" means an insurance company, health service corporation,
26 hospital service corporation, medical service corporation or health
27 maintenance organization which is authorized to issue health benefits
28 plans in this State and a dental service corporation or dental plan
29 organization authorized to issue dental plans in this State.

30 "Covered person" means a person on whose behalf a carrier which
31 offers a health benefits or dental plan is obligated to pay benefits or
32 provide services pursuant to the plan.

33 "Covered service" means a health care or dental service provided
34 to a covered person under a health benefits or dental plan for which
35 the carrier is obligated to pay benefits or provide services.

36 "Dental plan" means a benefits plan which pays or provides dental
37 expense benefits for covered services and is delivered or issued for
38 delivery in this State by or through a dental carrier.

39 "Dentist" means a person who is licensed to practice dentistry by
40 the New Jersey State Board of Dentistry in accordance with the
41 provisions of Title 45 of the Revised Statutes.

42 "Health benefits plan" means a plan which pays or provides
43 hospital and medical expense benefits for covered services, and is
44 delivered or issued for delivery in this State by or through a carrier.
45 For the purposes of this act, health benefits plan shall not include the
46 following plans, policies or contracts: Medicare supplement coverage

1 and risk contracts, accident only, specified disease or other limited
2 benefit, credit, disability, long-term care, CHAMPUS supplement
3 coverage, coverage arising out of a workers' compensation or similar
4 law, automobile medical payment insurance, personal injury protection
5 insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.),
6 dental or vision care coverage only, or hospital expense or
7 confinement indemnity coverage only.

8 "Joint negotiation representative" means a representative selected
9 by two or more independent physicians or dentists to engage in joint
10 negotiations with a carrier on their behalf.

11 "Physician" means a person who is licensed to practice medicine
12 and surgery by the State Board of Medical Examiners in accordance
13 with the provisions of Title 45 of the Revised Statutes.

14 "Utilization management" means a system for reviewing the
15 appropriate and efficient allocation of health care or dental services
16 under a health benefits or dental plan in accordance with specific
17 guidelines, for the purpose of determining whether, or to what extent,
18 a health care or dental service that has been provided or is proposed
19 to be provided to a covered person is to be covered under the health
20 benefits or dental plan.

21

22 3. Two or more independent physicians or dentists who are
23 practicing in the service area of a carrier may jointly negotiate with a
24 carrier and engage in related joint activity, as provided in this act,
25 regarding non-fee-related matters which may affect patient care,
26 including, but not limited to, any of the following:

27 a. the definition of medical necessity and other conditions of
28 coverage;

29 b. utilization management criteria and procedures;

30 c. clinical practice guidelines;

31 d. preventive care and other medical management policies;

32 e. patient referral standards and procedures, including, but not
33 limited to, those applicable to out-of-network referrals;

34 f. drug formularies and standards and procedures for prescribing
35 off-formulary drugs;

36 g. quality assurance programs;

37 h. respective physician or dentist and carrier liability for the
38 treatment or lack of treatment of covered persons;

39 i. the methods and timing of payments;

40 j. other administrative procedures, including, but not limited to,
41 eligibility verification systems and claim documentation requirements
42 for covered persons;

43 k. credentialing standards and procedures for the selection,
44 retention and termination of participating physicians or dentists;

45 l. mechanisms for resolving disputes between the carrier and
46 physicians or dentists, including, but not limited to, the appeals

- 1 process for utilization management and credentialing determinations;
2 m. the health benefits or dental plans sold or administered by the
3 carrier in which the physicians or dentists are required to participate;
4 n. the formulation and application of reimbursement methodology;
5 o. the terms and conditions of physician or dentist contracts,
6 including, but not limited to, all products clauses, and the duration and
7 renewal provisions of the contract; and
8 p. the inclusion or alteration of a contractual term or condition,
9 except when the inclusion or alteration is required by a federal or State
10 regulation concerning that term or condition; however, the restriction
11 shall not limit a physician's or dentist's rights to jointly petition the
12 federal or State government, as applicable, to change the regulation.
13
- 14 4. a. Upon a finding by the Attorney General, in consultation with
15 the Commissioners of Banking and Insurance and Health and Senior
16 Services, that the carrier has substantial market power in its service
17 area and that any of the terms or conditions of the contract with the
18 carrier pose an actual or potential threat to the quality and availability
19 of patient care among covered persons, two or more independent
20 physicians or dentists who are practicing in the service area of a carrier
21 may jointly negotiate with the carrier and engage in related joint
22 activity, as provided in this act regarding fees and fee-related matters,
23 including, but not limited to, any of the following:
24 (1) the amount of payment or the methodology for determining the
25 payment for a health care or dental service, including, but not limited
26 to, cost of living increases;
27 (2) the conversion factor for a resource-based relative value scale
28 or similar reimbursement methodology for health care or dental
29 services;
30 (3) the amount of any discount on the price of a health care or
31 dental service;
32 (4) the procedure code or other description of a health care or
33 dental service covered by a payment and the appropriate grouping of
34 the procedure codes;
35 (5) the amount of a bonus related to the provision of health care
36 or dental services or a withholding from the payment due for a health
37 care or dental service; and
38 (6) the amount of any other component of the reimbursement
39 methodology for a health care or dental service.
40 b. The Department of Banking and Insurance, in consultation with
41 the Department of Health and Senior Services, shall have the authority
42 to collect and investigate such information as it reasonably believes is
43 necessary to determine, on an annual basis:
44 (1) the average number of covered lives and geographical
45 distribution of covered lives per quarter per county for every carrier
46 in the State; and

1 (2) the impact of the provisions of this section on average
2 physician or dentist fees in the State.

3 The Department of Banking and Insurance shall provide this
4 information to the Attorney General on an annual basis.

5
6 5. The exercise of joint negotiation rights by two or more
7 independent physicians or dentists who are practicing in the service
8 area of a carrier pursuant to this act shall conform to the following
9 criteria:

10 a. the physicians or dentists may communicate with each other
11 concerning any contractual term or condition to be negotiated with the
12 carrier;

13 b. the physicians or dentists may communicate with the joint
14 negotiation representative authorized to negotiate on their behalf with
15 the carrier concerning any contractual term or condition;

16 c. the joint negotiation representative shall be the sole party
17 authorized to negotiate with the carrier on behalf of the physicians or
18 dentists as a group;

19 d. the physicians or dentists may, at the option of each physician
20 or dentist, agree to be bound by the terms and conditions negotiated
21 by the joint negotiation representative; and

22 e. when communicating or negotiating with a joint negotiation
23 representative, a carrier may offer different contractual terms or
24 conditions to, or may contract with, individual independent physicians
25 or dentists.

26
27 6. The provisions of this act shall not apply to a health benefits or
28 dental plan which is certified by the Commissioner of Human Services
29 to the Attorney General as providing covered services exclusively or
30 primarily to persons who are eligible for medical assistance under
31 P.L.1968, c.413 (C.30:4D-1 et seq.), the Children's Health Care
32 Coverage Program under P.L.1997, c.272 (C.30:4I-1 et seq.) or the
33 FamilyCare Health Coverage Program under P.L.2000, c.71 (C.30:4J-
34 1 et seq.).

35
36 7. A person or entity which proposes to act as a joint negotiation
37 representative shall satisfy the following requirements:

38 a. Before entering into negotiations with a carrier on behalf of two
39 or more independent physicians or dentists, the joint negotiation
40 representative shall submit to the Attorney General, for his approval
41 pursuant to section 8 of this act, on a form and in a manner prescribed
42 by the Attorney General, a petition which identifies:

43 (1) the representative's name and business address;

44 (2) the names and business addresses of each physician or dentist
45 who will be represented by the identified representative;

- 1 (3) the ratio of the physicians or dentists requesting joint
2 representation to the total number of physicians or dentists who are
3 practicing within the geographic service area of the carrier;
- 4 (4) the carrier with which the representative proposes to enter into
5 negotiations on behalf of the identified physicians or dentists;
- 6 (5) the intended subject matter of the proposed negotiations with
7 the identified carrier;
- 8 (6) the representative's plan of operation and procedures to ensure
9 compliance with the provisions of this act;
- 10 (7) the anticipated effect of the proposed joint negotiations on the
11 quality and availability of health or dental care among covered
12 persons;
- 13 (8) the anticipated benefits of a contract between the identified
14 physicians or dentists and carrier;
- 15 (9) such other data, information and documents as the petitioners
16 desire to submit in support of their petition; and
- 17 (10) such other data, information and documents as the Attorney
18 General deems necessary.

19 The joint negotiation representative, upon submitting the petition,
20 shall pay a fee to the Attorney General in an amount, as determined by
21 the Attorney General, which shall be reasonable and necessary to
22 cover the costs associated with carrying out the provisions of this act.

23 b. After the joint negotiation representative and the carrier
24 identified pursuant to subsection a. of this section have reached an
25 agreement on the contractual terms or conditions that were the subject
26 matter of their negotiations, the joint negotiation representative shall
27 submit to the Attorney General, for his approval in accordance with
28 the provisions of section 8 of this act, a copy of the proposed contract
29 between the physicians or dentists identified pursuant to subsection a.
30 of this section and the carrier, as well as any plan of action which the
31 joint negotiation representative and the carrier may formally agree to
32 for the purpose of implementing the terms and conditions of the
33 contract.

34 c. Within 14 days after either party notifies the other party of its
35 decision to decline or terminate negotiations entered into pursuant to
36 this act, or after the date that a joint negotiation representative
37 requests that a carrier enter into such negotiations to which request
38 the plan fails to respond, the joint negotiation representative shall
39 report to the Attorney General that the negotiations have ended, on a
40 form and in a manner to be prescribed by the Attorney General. The
41 joint negotiation representative may resume negotiations with the
42 carrier no later than 60 days after reporting to the Attorney General
43 that the negotiations have ended, on the basis of the petition submitted
44 to the Attorney General pursuant to subsection a. of this section and
45 approved by the Attorney General in accordance with the provisions
46 of section 8 of this act. After that date, the joint negotiation

1 representative shall be required to submit a new petition and pay an
2 additional fee to the Attorney General pursuant to subsection a. of this
3 section, in order to engage in negotiations with the carrier under this
4 act.

5
6 8. a. The Attorney General shall provide written approval or
7 disapproval of a petition or a proposed contract furnished by a joint
8 negotiation representative pursuant to section 7 of this act no later
9 than 30 days after receipt of the petition or proposed contract, as
10 applicable. If the Attorney General fails to provide written approval
11 or disapproval within this time period, the joint negotiation
12 representative may petition a court of competent jurisdiction for an
13 order to require the Attorney General to take such action. If the
14 Attorney General disapproves the petition or the proposed contract,
15 he shall forward a written explanation of any deficiencies therein to the
16 joint negotiation representative along with a statement of the specific
17 remedial measures by which those deficiencies may be corrected.

18 A joint negotiation representative shall not engage in negotiations
19 with a carrier over any contractual term or condition unless the
20 petition furnished by the joint negotiation representative has been
21 approved in writing by the Attorney General, nor shall a proposed
22 contract between two or more independent physicians or dentists and
23 a carrier be implemented unless the Attorney General has approved the
24 contract.

25 b. The Attorney General shall approve a petition or a proposed
26 contract furnished by a joint negotiation representative pursuant to
27 section 7 of this act if the Attorney General determines that the
28 petition or proposed contract demonstrates that the benefits which are
29 likely to result from the proposed joint negotiations over a contractual
30 term or condition or the proposed contract, as applicable, outweigh
31 the disadvantages attributable to a reduction in competition that may
32 result from the proposed joint negotiations. In making his
33 determination, the Attorney General shall consider physician or dentist
34 distribution by specialty and its effect on competition in the geographic
35 service area of the carrier.

36 c. The Attorney General's written approval of a petition which is
37 furnished by a joint negotiation representative under section 7 of this
38 act shall be effective for all subsequent negotiations between the joint
39 negotiation representative and the identified carrier, subject to the
40 provisions of subsection c. of section 7 of this act.

41 d. In the case of a petition submitted pursuant to subsection a. of
42 section 7 of this act, the Attorney General shall notify the carrier of
43 the petition and provide the carrier with the opportunity to submit
44 written comments within a specified time frame that does not extend
45 beyond the date by which the Attorney General is required to act on
46 the petition.

1 9. a. Within 30 days from the mailing by the Attorney General of
2 a notice of disapproval of a petition submitted under section 7 of this
3 act, the petitioners may make a written application to the Attorney
4 General for a hearing.

5 b. Upon receipt of a timely written application for a hearing, the
6 Attorney General shall schedule and conduct a hearing in accordance
7 with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
8 1 et seq.). The hearing shall be held within 30 days of the application
9 unless the petitioner seeks an extension.

10 c. The sole parties with respect to any petition under section 7 of
11 this act shall be the petitioners, and notwithstanding any other
12 provision of law to the contrary, the Attorney General shall not be
13 required to treat any other person as a party and no other person shall
14 be entitled to appeal the Attorney General's determination.

15
16 10. All information, including documents and copies thereof,
17 obtained by or disclosed to the Attorney General or any other person
18 in a petition under section 7 of this act, shall be treated confidentially
19 and shall be deemed proprietary and shall not be made public or
20 otherwise disclosed by the Attorney General or any other person
21 without the written consent of the petitioners to whom the information
22 pertains.

23
24 11. A carrier and a joint negotiation representative shall negotiate
25 in good faith regarding the terms and conditions of physician or dentist
26 contracts pursuant to this act.

27
28 12. a. The provisions of this act shall not be construed to:

29 (1) permit two or more physicians or dentists to jointly engage in
30 a coordinated cessation, reduction or limitation of the health care or
31 dental services which they provide;

32 (2) permit two or more physicians or dentists to meet or
33 communicate in order to jointly negotiate a requirement that at least
34 one of the physicians or dentists, as a condition of participation with
35 a carrier, be allowed to participate in all of the products offered by the
36 carrier;

37 (3) permit two or more physicians or dentists to jointly negotiate
38 with a carrier to exclude, limit or otherwise restrict a non-physician or
39 non-dentist health care provider from participating in the carrier's
40 health benefits or dental plan based substantially on the fact that the
41 health care provider is not a physician or dentist, unless that exclusion,
42 limitation or restriction is otherwise permitted by law;

43 (4) prohibit or restrict activity by physicians or dentists that is
44 sanctioned under federal or State law or subject such activity to the
45 requirements of this act;

1 (5) affect governmental approval of, or otherwise restrict activity
2 by, physicians or dentists that is not prohibited under federal antitrust
3 law; or

4 (6) require approval of physician or dentist contract terms to the
5 extent that the terms are exempt from State regulation under section
6 514(a) of the "Employee Retirement Income Security Act of 1974,"
7 Pub.L.93-406 (29 U.S.C. s.1144(a)).

8 b. Prior to entering into negotiations with a carrier on behalf of
9 two or more independent physicians or dentists over a contractual
10 term or condition, a joint negotiation representative shall notify the
11 physicians or dentists in writing of the provisions of this act and advise
12 them as to their potential for legal action against physicians or dentists
13 who violate federal antitrust law.

14
15 13. The Attorney General, in consultation with the Commissioners
16 of Banking and Insurance and Health and Senior Services, shall report
17 to the Governor and the Legislature no later than four years after the
18 effective date of this act on its implementation.

19 The report shall include the number of petitions submitted for
20 approval to engage in joint negotiations and the outcome of the
21 petitions and the negotiations, an assessment of the effect the joint
22 negotiations provided for in this act has had in restoring the
23 competitive balance in the market for health care or dental services
24 and in protecting access to quality patient care, and such other
25 information that the Attorney General deems appropriate. The report
26 shall also include the Attorney General's recommendations as to
27 whether the provisions of this act shall be expanded to include other
28 types of health care professionals and facilities.

29
30 14. The Attorney General, in consultation with the Commissioners
31 of Banking and Insurance and Health and Senior Services and pursuant
32 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
33 et seq.), shall adopt rules and regulations to effectuate the purposes of
34 this act.

35
36 15. This act shall take effect 90 days after enactment, except that
37 the Attorney General, in consultation with the Commissioners of
38 Banking and Insurance and Health and Senior Services, may take such
39 anticipatory administrative action in advance as shall be necessary to
40 implement the act.

SENATE HEALTH COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, Nos. 1033 and 1098

STATE OF NEW JERSEY

DATED: NOVEMBER 1, 2000

The Senate Health Committee reports without recommendation a Senate Committee Substitute for Senate Bill Nos.1033 and 1098.

The purpose of this substitute is to provide physicians and dentists with the right to engage in joint negotiations over the terms and conditions of their contracts with health and dental insurance carriers, that is, health, hospital and medical service corporations, commercial health insurers, health maintenance organizations, dental service corporations and dental plan organizations.

The substitute permits two or more independent physicians or dentists who are practicing in the geographic service area of a carrier to jointly negotiate with the carrier and engage in related joint activity over the terms and conditions of a proposed contract. The negotiations would be carried out through a joint negotiation representative selected by the physicians or dentists to act on their behalf.

The terms and conditions that may be the subject of the negotiations include non-fee-related matters which may affect patient care, such as any of the following:

- C the definition of medical necessity and other conditions of coverage;
- C utilization management criteria and procedures;
- C clinical practice guidelines;
- C preventive care and other medical management policies;
- C patient referral standards and procedures, including, but not limited to, those applicable to out-of-network referrals;
- C drug formularies and standards and procedures for prescribing off-formulary drugs;
- C quality assurance programs;
- C respective physician or dentist and carrier liability for the treatment or lack of treatment of covered persons;
- C the methods and timing of payments;
- C other administrative procedures, including, but not limited to, eligibility verification systems and claim documentation requirements for covered persons;

- C credentialing standards and procedures for the selection, retention and termination of participating physicians or dentists;
- C mechanisms for resolving disputes between the carrier and physicians or dentists, including, but not limited to, the appeals process for utilization management and credentialing determinations;
- C the health benefits or dental plans sold or administered by the carrier in which the physicians or dentists are required to participate;
- C the formulation and application of reimbursement methodology;
- C the terms and conditions of physician or dentist contracts, including, but not limited to, all products clauses, and the duration and renewal provisions of the contract; and
- C the inclusion or alteration of a contractual term or condition, except when the inclusion or alteration is required by a federal or State regulation concerning that term or condition; however, the restriction shall not limit a physician's or dentist's rights to jointly petition the federal or State government, as applicable, to change the regulation.

In addition, the substitute provides that the following terms and conditions of a proposed contract concerning fees and fee-related matters may be subject to joint negotiations if the Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, finds that the carrier has substantial market power in its service area and that any of the terms or conditions of the contract with the carrier pose an actual or potential threat to the quality and availability of patient care among covered persons. These matters include, but are not limited to, any of the following:

- C the amount of payment or the methodology for determining the payment for a health care or dental service, including, but not limited to, cost of living increases;
- C the conversion factor for a resource-based relative value scale or similar reimbursement methodology for health care or dental services;
- C the amount of any discount on the price of a health care or dental service;
- C the procedure code or other description of a health care or dental service covered by a payment and the appropriate grouping of the procedure codes;
- C the amount of a bonus related to the provision of health care or dental services or a withholding from the payment due for a health care or dental service; and
- C the amount of any other component of the reimbursement methodology for a health care or dental service.

The substitute requires that a person or entity which proposes to act as a joint negotiation representative shall submit a petition to the

Attorney General, for his approval. The petition shall identify the representative, the physicians or dentists who the representative will represent, the intended subject matter of the proposed negotiations and other information specified in the substitute. Upon submitting the petition, the representative shall pay a fee to the Attorney General, in an amount determined by the Attorney General, which shall be reasonable and necessary to cover the costs associated with carrying out the provisions of this substitute.

After the joint negotiation representative and the carrier have reached an agreement on the contractual terms or conditions that were the subject matter of their negotiations, the representative shall submit a copy of the proposed contract between the physicians or dentists and the carrier to the Attorney General, for his approval. The Attorney General shall provide written approval or disapproval of a petition or a proposed contract furnished by the representative no later than 30 days after receipt of the petition or proposed contract.

The substitute provides that a joint negotiation representative shall not engage in negotiations with a carrier unless the representative's petition has been approved in writing by the Attorney General, and a proposed contract between physicians or dentists and a carrier negotiated under this substitute shall not be implemented unless the Attorney General has approved the contract. The substitute further provides that either party may decline to negotiate or terminate negotiations. In either event, the representative shall so notify the Attorney General.

The Attorney General shall approve a petition or a proposed contract if he determines that the petition or proposed contract demonstrates that the benefits which are likely to result from the proposed joint negotiations or contract, as applicable, outweigh the disadvantages attributable to a reduction in competition that may result from the proposed joint negotiations. In making his determination, the Attorney General shall consider physician or dentist distribution by specialty and its effect on competition in the geographic service area of the carrier.

The substitute provides that its provisions shall not be construed to:

(1) permit two or more physicians or dentists to jointly engage in a coordinated cessation, reduction or limitation of the health care or dental services which they provide;

(2) permit two or more physicians or dentists to meet or communicate in order to jointly negotiate a requirement that at least one of the physicians or dentists, as a condition of participation with a carrier, be allowed to participate in all of the products offered by the carrier;

(3) permit two or more physicians or dentists to jointly negotiate with a carrier to exclude, limit or otherwise restrict a non-physician or non-dentist health care provider from participating in the carrier's

health benefits or dental plan based substantially on the fact that the health care provider is not a physician or dentist, unless that exclusion, limitation or restriction is otherwise permitted by law;

(4) prohibit or restrict activity by physicians or dentists that is sanctioned under federal or State law or subject such activity to the requirements of this act;

(5) affect governmental approval of, or otherwise restrict activity by, physicians or dentists that is not prohibited under federal antitrust law; or

(6) require approval of physician or dentist contract terms to the extent that the terms are exempt from State regulation under ERISA.

Finally, the substitute provides that its provisions shall not apply to a health benefits or dental plan which is certified by the Commissioner of Human Services to the Attorney General as providing covered services exclusively or primarily to persons who are eligible for Medicaid, NJ KidCare or NJ FamilyCare.

STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1033 and 1098

with Senate Floor Amendments
(Proposed By Senator CODEY)

ADOPTED: DECEMBER 4, 2000

These amendments require the Attorney General, in consultation with the Commissioners of Health and Senior Services and Banking and Insurance, to include in their report to the Legislature and the Governor on the implementation of the bill, an assessment of the impact this bill has had on health insurance premiums. The report shall be prepared no later than four years after the effective date of the bill.

The amendments also provide that the provisions of the bill shall sunset in six years. The Attorney General, in consultation with the commissioners, is required to report to the Governor and the Legislature in five years with his recommendation as to whether this bill should be made permanent. Amendments also clarify that the expiration of this bill shall not impair any contract negotiated pursuant to this bill that is in effect on the date of expiration.

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1033 and 1098

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED NOVEMBER 9, 2000

Sponsored by:

Senator MARTHA W. BARK

District 8 (Atlantic, Burlington and Camden)

Senator DONALD T. DIFRANCESCO

District 22 (Middlesex, Morris, Somerset and Union)

Senator JOHN J. MATHEUSSEN

District 4 (Camden and Gloucester)

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

Co-Sponsored by:

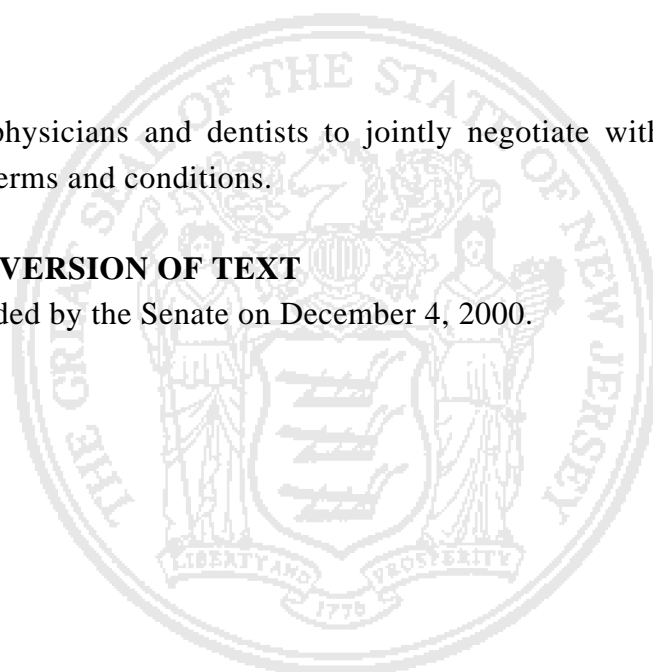
Senators Allen, Gormley, Bennett, Adler, Assemblymen Chatzidakis, Asselta, Doria, Conaway, Connors, LeFevre, Gusciora, Assemblywoman Weinberg, Assemblymen Geist, Cohen, Munoz and Assemblywoman Gill

SYNOPSIS

Allows physicians and dentists to jointly negotiate with carriers over contractual terms and conditions.

CURRENT VERSION OF TEXT

As amended by the Senate on December 4, 2000.



(Sponsorship Updated As Of: 1/8/2002)

1 **AN ACT** providing for joint negotiations by physicians and dentists
2 with carriers and supplementing Title 52 of the Revised Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. The Legislature finds and declares that:

8 a. Active, robust and fully competitive markets for health care and
9 dental services provide the best opportunity for the residents of this
10 State to receive high-quality health care and dental services at an
11 appropriate cost;

12 b. A substantial amount of health care and dental services in this
13 State is purchased for the benefit of patients by health and dental
14 insurance carriers engaged in the financing of health care and dental
15 services or is otherwise delivered subject to the terms of agreements
16 between carriers and physicians and dentists;

17 c. Carriers are able to control the flow of patients to physicians
18 and dentists through compelling financial incentives for patients in
19 their health and dental benefits plans to utilize only the services of
20 physicians and dentists with whom the carriers have contracted;

21 d. Carriers also control the health care and dental services
22 rendered to patients through utilization management and other
23 managed care tools and associated coverage and payment policies;

24 e. Carriers are often able to virtually dictate the terms of the
25 contracts that they offer physicians and dentists and commonly offer
26 these contracts on a take-it-or-leave-it basis;

27 f. The power of carriers to unilaterally impose provider contract
28 terms jeopardizes the ability of physicians and dentists to deliver the
29 superior quality health care and dental services traditionally available
30 in this State;

31 g. Physicians and dentists do not have sufficient market power to
32 reject unfair provider contract terms offered by carriers that impede
33 their ability to deliver medically appropriate care without undue delay
34 or difficulties;

35 h. Inadequate reimbursement and other unfair payment terms
36 offered by carriers adversely affect the quality of patient care and
37 access to care by reducing the resources that physicians and dentists
38 can devote to patient care and decreasing the time that physicians and
39 dentists are able to spend with their patients;

40 i. Inequitable reimbursement and other unfair payment terms also
41 endanger the health care infrastructure and medical progress by
42 diverting capital needed for reinvestment in the health care delivery

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted December 4, 2000.

1 system, curtailing the purchase of state-of-the-art technology, the
2 pursuit of medical research, and expansion of medical services, all to
3 the detriment of the residents of this State;

4 j. The inevitable collateral reduction and migration of the health
5 care work force will also have negative consequences for the economy
6 of this State;

7 k. Empowering independent physicians and dentists to jointly
8 negotiate with carriers as provided in this act will help restore the
9 competitive balance and improve competition in the markets for health
10 care and dental services in this State, thereby providing benefits for
11 consumers, physicians and dentists and less dominant carriers;

12 l. This act is necessary and proper, and constitutes an appropriate
13 exercise of the authority of this State to regulate the business of
14 insurance and the delivery of health care and dental services;

15 m. The pro-competitive and other benefits of the joint negotiations
16 and related joint activity authorized by this act, including, but not
17 limited to, restoring the competitive balance in the market for health
18 care services, protecting access to quality patient care, promoting the
19 health care infrastructure and medical progress, and improving
20 communications, outweigh any potential anti-competitive effects of
21 this act; and

22 n. It is the intention of the Legislature to authorize independent
23 physicians and dentists to jointly negotiate with carriers and to qualify
24 such joint negotiations and related joint activities for the State-action
25 exemption to the federal antitrust laws through the articulated State
26 policy and active supervision provided under this act.

27

28 2. As used in this act:

29 "Carrier" means an insurance company, health service corporation,
30 hospital service corporation, medical service corporation or health
31 maintenance organization which is authorized to issue health benefits
32 plans in this State and a dental service corporation or dental plan
33 organization authorized to issue dental plans in this State.

34 "Covered person" means a person on whose behalf a carrier which
35 offers a health benefits or dental plan is obligated to pay benefits or
36 provide services pursuant to the plan.

37 "Covered service" means a health care or dental service provided
38 to a covered person under a health benefits or dental plan for which
39 the carrier is obligated to pay benefits or provide services.

40 "Dental plan" means a benefits plan which pays or provides dental
41 expense benefits for covered services and is delivered or issued for
42 delivery in this State by or through a dental carrier.

43 "Dentist" means a person who is licensed to practice dentistry by
44 the New Jersey State Board of Dentistry in accordance with the
45 provisions of Title 45 of the Revised Statutes.

46 "Health benefits plan" means a plan which pays or provides

1 hospital and medical expense benefits for covered services, and is
2 delivered or issued for delivery in this State by or through a carrier.
3 For the purposes of this act, health benefits plan shall not include the
4 following plans, policies or contracts: Medicare supplement coverage
5 and risk contracts, accident only, specified disease or other limited
6 benefit, credit, disability, long-term care, CHAMPUS supplement
7 coverage, coverage arising out of a workers' compensation or similar
8 law, automobile medical payment insurance, personal injury protection
9 insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.),
10 dental or vision care coverage only, or hospital expense or
11 confinement indemnity coverage only.

12 "Joint negotiation representative" means a representative selected
13 by two or more independent physicians or dentists to engage in joint
14 negotiations with a carrier on their behalf.

15 "Physician" means a person who is licensed to practice medicine
16 and surgery by the State Board of Medical Examiners in accordance
17 with the provisions of Title 45 of the Revised Statutes.

18 "Utilization management" means a system for reviewing the
19 appropriate and efficient allocation of health care or dental services
20 under a health benefits or dental plan in accordance with specific
21 guidelines, for the purpose of determining whether, or to what extent,
22 a health care or dental service that has been provided or is proposed
23 to be provided to a covered person is to be covered under the health
24 benefits or dental plan.

25

26 3. Two or more independent physicians or dentists who are
27 practicing in the service area of a carrier may jointly negotiate with a
28 carrier and engage in related joint activity, as provided in this act,
29 regarding non-fee-related matters which may affect patient care,
30 including, but not limited to, any of the following:

31 a. the definition of medical necessity and other conditions of
32 coverage;

33 b. utilization management criteria and procedures;

34 c. clinical practice guidelines;

35 d. preventive care and other medical management policies;

36 e. patient referral standards and procedures, including, but not
37 limited to, those applicable to out-of-network referrals;

38 f. drug formularies and standards and procedures for prescribing
39 off-formulary drugs;

40 g. quality assurance programs;

41 h. respective physician or dentist and carrier liability for the
42 treatment or lack of treatment of covered persons;

43 i. the methods and timing of payments;

44 j. other administrative procedures, including, but not limited to,
45 eligibility verification systems and claim documentation requirements
46 for covered persons;

- 1 k. credentialing standards and procedures for the selection,
2 retention and termination of participating physicians or dentists;
- 3 l. mechanisms for resolving disputes between the carrier and
4 physicians or dentists, including, but not limited to, the appeals
5 process for utilization management and credentialing determinations;
- 6 m. the health benefits or dental plans sold or administered by the
7 carrier in which the physicians or dentists are required to participate;
- 8 n. the formulation and application of reimbursement methodology;
- 9 o. the terms and conditions of physician or dentist contracts,
10 including, but not limited to, all products clauses, and the duration and
11 renewal provisions of the contract; and
- 12 p. the inclusion or alteration of a contractual term or condition,
13 except when the inclusion or alteration is required by a federal or State
14 regulation concerning that term or condition; however, the restriction
15 shall not limit a physician's or dentist's rights to jointly petition the
16 federal or State government, as applicable, to change the regulation.
17
- 18 4. a. Upon a finding by the Attorney General, in consultation with
19 the Commissioners of Banking and Insurance and Health and Senior
20 Services, that the carrier has substantial market power in its service
21 area and that any of the terms or conditions of the contract with the
22 carrier pose an actual or potential threat to the quality and availability
23 of patient care among covered persons, two or more independent
24 physicians or dentists who are practicing in the service area of a carrier
25 may jointly negotiate with the carrier and engage in related joint
26 activity, as provided in this act regarding fees and fee-related matters,
27 including, but not limited to, any of the following:
- 28 (1) the amount of payment or the methodology for determining the
29 payment for a health care or dental service, including, but not limited
30 to, cost of living increases;
- 31 (2) the conversion factor for a resource-based relative value scale
32 or similar reimbursement methodology for health care or dental
33 services;
- 34 (3) the amount of any discount on the price of a health care or
35 dental service;
- 36 (4) the procedure code or other description of a health care or
37 dental service covered by a payment and the appropriate grouping of
38 the procedure codes;
- 39 (5) the amount of a bonus related to the provision of health care
40 or dental services or a withholding from the payment due for a health
41 care or dental service; and
- 42 (6) the amount of any other component of the reimbursement
43 methodology for a health care or dental service.
- 44 b. The Department of Banking and Insurance, in consultation with
45 the Department of Health and Senior Services, shall have the authority
46 to collect and investigate such information as it reasonably believes is

1 necessary to determine, on an annual basis:

2 (1) the average number of covered lives and geographical
3 distribution of covered lives per quarter per county for every carrier
4 in the State; and

5 (2) the impact of the provisions of this section on average
6 physician or dentist fees in the State.

7 The Department of Banking and Insurance shall provide this
8 information to the Attorney General on an annual basis.

9

10 5. The exercise of joint negotiation rights by two or more
11 independent physicians or dentists who are practicing in the service
12 area of a carrier pursuant to this act shall conform to the following
13 criteria:

14 a. the physicians or dentists may communicate with each other
15 concerning any contractual term or condition to be negotiated with the
16 carrier;

17 b. the physicians or dentists may communicate with the joint
18 negotiation representative authorized to negotiate on their behalf with
19 the carrier concerning any contractual term or condition;

20 c. the joint negotiation representative shall be the sole party
21 authorized to negotiate with the carrier on behalf of the physicians or
22 dentists as a group;

23 d. the physicians or dentists may, at the option of each physician
24 or dentist, agree to be bound by the terms and conditions negotiated
25 by the joint negotiation representative; and

26 e. when communicating or negotiating with a joint negotiation
27 representative, a carrier may offer different contractual terms or
28 conditions to, or may contract with, individual independent physicians
29 or dentists.

30

31 6. The provisions of this act shall not apply to a health benefits or
32 dental plan which is certified by the Commissioner of Human Services
33 to the Attorney General as providing covered services exclusively or
34 primarily to persons who are eligible for medical assistance under
35 P.L.1968, c.413 (C.30:4D-1 et seq.), the Children's Health Care
36 Coverage Program under P.L.1997, c.272 (C.30:4I-1 et seq.) or the
37 FamilyCare Health Coverage Program under P.L.2000, c.71 (C.30:4J-
38 1 et seq.).

39

40 7. A person or entity which proposes to act as a joint negotiation
41 representative shall satisfy the following requirements:

42 a. Before entering into negotiations with a carrier on behalf of two
43 or more independent physicians or dentists, the joint negotiation
44 representative shall submit to the Attorney General, for his approval
45 pursuant to section 8 of this act, on a form and in a manner prescribed
46 by the Attorney General, a petition which identifies:

- 1 (1) the representative's name and business address;
- 2 (2) the names and business addresses of each physician or dentist
3 who will be represented by the identified representative;
- 4 (3) the ratio of the physicians or dentists requesting joint
5 representation to the total number of physicians or dentists who are
6 practicing within the geographic service area of the carrier;
- 7 (4) the carrier with which the representative proposes to enter into
8 negotiations on behalf of the identified physicians or dentists;
- 9 (5) the intended subject matter of the proposed negotiations with
10 the identified carrier;
- 11 (6) the representative's plan of operation and procedures to ensure
12 compliance with the provisions of this act;
- 13 (7) the anticipated effect of the proposed joint negotiations on the
14 quality and availability of health or dental care among covered
15 persons;
- 16 (8) the anticipated benefits of a contract between the identified
17 physicians or dentists and carrier;
- 18 (9) such other data, information and documents as the petitioners
19 desire to submit in support of their petition; and
- 20 (10) such other data, information and documents as the Attorney
21 General deems necessary.

22 The joint negotiation representative, upon submitting the petition,
23 shall pay a fee to the Attorney General in an amount, as determined by
24 the Attorney General, which shall be reasonable and necessary to
25 cover the costs associated with carrying out the provisions of this act.

26 b. After the joint negotiation representative and the carrier
27 identified pursuant to subsection a. of this section have reached an
28 agreement on the contractual terms or conditions that were the subject
29 matter of their negotiations, the joint negotiation representative shall
30 submit to the Attorney General, for his approval in accordance with
31 the provisions of section 8 of this act, a copy of the proposed contract
32 between the physicians or dentists identified pursuant to subsection a.
33 of this section and the carrier, as well as any plan of action which the
34 joint negotiation representative and the carrier may formally agree to
35 for the purpose of implementing the terms and conditions of the
36 contract.

37 c. Within 14 days after either party notifies the other party of its
38 decision to decline or terminate negotiations entered into pursuant to
39 this act, or after the date that a joint negotiation representative
40 requests that a carrier enter into such negotiations to which request
41 the plan fails to respond, the joint negotiation representative shall
42 report to the Attorney General that the negotiations have ended, on a
43 form and in a manner to be prescribed by the Attorney General. The
44 joint negotiation representative may resume negotiations with the
45 carrier no later than 60 days after reporting to the Attorney General
46 that the negotiations have ended, on the basis of the petition submitted

1 to the Attorney General pursuant to subsection a. of this section and
2 approved by the Attorney General in accordance with the provisions
3 of section 8 of this act. After that date, the joint negotiation
4 representative shall be required to submit a new petition and pay an
5 additional fee to the Attorney General pursuant to subsection a. of this
6 section, in order to engage in negotiations with the carrier under this
7 act.

8
9 8. a. The Attorney General shall provide written approval or
10 disapproval of a petition or a proposed contract furnished by a joint
11 negotiation representative pursuant to section 7 of this act no later
12 than 30 days after receipt of the petition or proposed contract, as
13 applicable. If the Attorney General fails to provide written approval
14 or disapproval within this time period, the joint negotiation
15 representative may petition a court of competent jurisdiction for an
16 order to require the Attorney General to take such action. If the
17 Attorney General disapproves the petition or the proposed contract,
18 he shall forward a written explanation of any deficiencies therein to the
19 joint negotiation representative along with a statement of the specific
20 remedial measures by which those deficiencies may be corrected.

21 A joint negotiation representative shall not engage in negotiations
22 with a carrier over any contractual term or condition unless the
23 petition furnished by the joint negotiation representative has been
24 approved in writing by the Attorney General, nor shall a proposed
25 contract between two or more independent physicians or dentists and
26 a carrier be implemented unless the Attorney General has approved the
27 contract.

28 b. The Attorney General shall approve a petition or a proposed
29 contract furnished by a joint negotiation representative pursuant to
30 section 7 of this act if the Attorney General determines that the
31 petition or proposed contract demonstrates that the benefits which are
32 likely to result from the proposed joint negotiations over a contractual
33 term or condition or the proposed contract, as applicable, outweigh
34 the disadvantages attributable to a reduction in competition that may
35 result from the proposed joint negotiations. In making his
36 determination, the Attorney General shall consider physician or dentist
37 distribution by specialty and its effect on competition in the geographic
38 service area of the carrier.

39 c. The Attorney General's written approval of a petition which is
40 furnished by a joint negotiation representative under section 7 of this
41 act shall be effective for all subsequent negotiations between the joint
42 negotiation representative and the identified carrier, subject to the
43 provisions of subsection c. of section 7 of this act.

44 d. In the case of a petition submitted pursuant to subsection a. of
45 section 7 of this act, the Attorney General shall notify the carrier of
46 the petition and provide the carrier with the opportunity to submit

1 written comments within a specified time frame that does not extend
2 beyond the date by which the Attorney General is required to act on
3 the petition.

4
5 9. a. Within 30 days from the mailing by the Attorney General of
6 a notice of disapproval of a petition submitted under section 7 of this
7 act, the petitioners may make a written application to the Attorney
8 General for a hearing.

9 b. Upon receipt of a timely written application for a hearing, the
10 Attorney General shall schedule and conduct a hearing in accordance
11 with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
12 1 et seq.). The hearing shall be held within 30 days of the application
13 unless the petitioner seeks an extension.

14 c. The sole parties with respect to any petition under section 7 of
15 this act shall be the petitioners, and notwithstanding any other
16 provision of law to the contrary, the Attorney General shall not be
17 required to treat any other person as a party and no other person shall
18 be entitled to appeal the Attorney General's determination.

19
20 10. All information, including documents and copies thereof,
21 obtained by or disclosed to the Attorney General or any other person
22 in a petition under section 7 of this act, shall be treated confidentially
23 and shall be deemed proprietary and shall not be made public or
24 otherwise disclosed by the Attorney General or any other person
25 without the written consent of the petitioners to whom the information
26 pertains.

27
28 11. A carrier and a joint negotiation representative shall negotiate
29 in good faith regarding the terms and conditions of physician or dentist
30 contracts pursuant to this act.

31
32 12. a. The provisions of this act shall not be construed to:

33 (1) permit two or more physicians or dentists to jointly engage in
34 a coordinated cessation, reduction or limitation of the health care or
35 dental services which they provide;

36 (2) permit two or more physicians or dentists to meet or
37 communicate in order to jointly negotiate a requirement that at least
38 one of the physicians or dentists, as a condition of participation with
39 a carrier, be allowed to participate in all of the products offered by the
40 carrier;

41 (3) permit two or more physicians or dentists to jointly negotiate
42 with a carrier to exclude, limit or otherwise restrict a non-physician or
43 non-dentist health care provider from participating in the carrier's
44 health benefits or dental plan based substantially on the fact that the
45 health care provider is not a physician or dentist, unless that exclusion,
46 limitation or restriction is otherwise permitted by law;

1 (4) prohibit or restrict activity by physicians or dentists that is
2 sanctioned under federal or State law or subject such activity to the
3 requirements of this act;

4 (5) affect governmental approval of, or otherwise restrict activity
5 by, physicians or dentists that is not prohibited under federal antitrust
6 law; or

7 (6) require approval of physician or dentist contract terms to the
8 extent that the terms are exempt from State regulation under section
9 514(a) of the "Employee Retirement Income Security Act of 1974,"
10 Pub.L.93-406 (29 U.S.C. s.1144(a)).

11 b. Prior to entering into negotiations with a carrier on behalf of
12 two or more independent physicians or dentists over a contractual
13 term or condition, a joint negotiation representative shall notify the
14 physicians or dentists in writing of the provisions of this act and advise
15 them as to their potential for legal action against physicians or dentists
16 who violate federal antitrust law.

17
18 13. The Attorney General, in consultation with the Commissioners
19 of Banking and Insurance and Health and Senior Services, shall report
20 to the Governor and the Legislature no later than four years after the
21 effective date of this act on its implementation.

22 The report shall include the number of petitions submitted for
23 approval to engage in joint negotiations and the outcome of the
24 petitions and the negotiations, an assessment of the effect the joint
25 negotiations provided for in this act has had in restoring the
26 competitive balance in the market for health care or dental services
27 and in protecting access to quality patient care, ¹an assessment of the
28 impact this act has had on health insurance premiums in the State,¹ and
29 such other information that the Attorney General deems appropriate.
30 The report shall also include the Attorney General's recommendations
31 as to whether the provisions of this act shall be expanded to include
32 other types of health care professionals and facilities.

33 ¹The Attorney General, in consultation with the Commissioners of
34 Banking and Insurance and Health and Senior Services, shall report to
35 the Governor and the Legislature no later than five years after the
36 effective date of this act with his recommendation as to whether this
37 act shall be made permanent.¹

38
39 14. The Attorney General, in consultation with the Commissioners
40 of Banking and Insurance and Health and Senior Services and pursuant
41 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
42 et seq.), shall adopt rules and regulations to effectuate the purposes of
43 this act.

44
45 15. This act shall take effect 90 days after enactment ¹[, except
46 that the] and shall expire six years after the effective date, but the

1 expiration of this act shall not impair any contract negotiated pursuant
2 to this act that is in effect on the date of expiration. The¹ Attorney
3 General, in consultation with the Commissioners of Banking and
4 Insurance and Health and Senior Services, may take such anticipatory
5 administrative action in advance ¹of the effective date¹ as shall be
6 necessary to implement the act.

ASSEMBLY HEALTH COMMITTEE

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 1033 and 1098**

STATE OF NEW JERSEY

DATED: JUNE 4, 2001

The Assembly Health Committee reports without recommendation Senate Bill Nos. 1033 and 1098(SCS/1R).

This committee substitute is intended to provide physicians and dentists with the right to engage in joint negotiations over the terms and conditions of their contracts with health and dental insurance carriers, that is, health, hospital and medical service corporations, commercial health insurers, health maintenance organizations, dental service corporations and dental plan organizations.

The substitute permits two or more independent physicians or dentists who are practicing in the geographic service area of a carrier to jointly negotiate with the carrier and engage in related joint activity over the terms and conditions of a proposed contract. The negotiations would be carried out through a joint negotiation representative selected by the physicians or dentists to act on their behalf.

The terms and conditions that may be the subject of the negotiations include non-fee-related matters which may affect patient care, such as any of the following:

- C the definition of medical necessity and other conditions of coverage;
- C utilization management criteria and procedures;
- C clinical practice guidelines;
- C preventive care and other medical management policies;
- C patient referral standards and procedures, including, but not limited to, those applicable to out-of-network referrals;
- C drug formularies and standards and procedures for prescribing off-formulary drugs;
- C quality assurance programs;
- C respective physician or dentist and carrier liability for the treatment or lack of treatment of covered persons;
- C the methods and timing of payments;
- C other administrative procedures, including, but not limited to,

- eligibility verification systems and claim documentation requirements for covered persons;
- C credentialing standards and procedures for the selection, retention and termination of participating physicians or dentists;
- C mechanisms for resolving disputes between the carrier and physicians or dentists, including, but not limited to, the appeals process for utilization management and credentialing determinations;
- C the health benefits or dental plans sold or administered by the carrier in which the physicians or dentists are required to participate;
- C the formulation and application of reimbursement methodology;
- C the terms and conditions of physician or dentist contracts, including, but not limited to, all products clauses, and the duration and renewal provisions of the contract; and
- C the inclusion or alteration of a contractual term or condition, except when the inclusion or alteration is required by a federal or State regulation concerning that term or condition; however, the restriction shall not limit a physician's or dentist's rights to jointly petition the federal or State government, as applicable, to change the regulation.

In addition, the substitute provides that the following terms and conditions of a proposed contract concerning fees and fee-related matters may be subject to joint negotiations if the Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, finds that the carrier has substantial market power in its service area and that any of the terms or conditions of the contract with the carrier pose an actual or potential threat to the quality and availability of patient care among covered persons. These matters include, but are not limited to, any of the following:

- C the amount of payment or the methodology for determining the payment for a health care or dental service, including, but not limited to, cost of living increases;
- C the conversion factor for a resource-based relative value scale or similar reimbursement methodology for health care or dental services;
- C the amount of any discount on the price of a health care or dental service;
- C the procedure code or other description of a health care or dental service covered by a payment and the appropriate grouping of the procedure codes;
- C the amount of a bonus related to the provision of health care or dental services or a withholding from the payment due for a health care or dental service; and
- C the amount of any other component of the reimbursement methodology for a health care or dental service.

The substitute requires that a person or entity which proposes to

act as a joint negotiation representative shall submit a petition to the Attorney General, for his approval. The petition shall identify the representative, the physicians or dentists who the representative will represent, the intended subject matter of the proposed negotiations and other information specified in the substitute. Upon submitting the petition, the representative shall pay a fee to the Attorney General, in an amount determined by the Attorney General, which shall be reasonable and necessary to cover the costs associated with carrying out the provisions of this substitute.

After the joint negotiation representative and the carrier have reached an agreement on the contractual terms or conditions that were the subject matter of their negotiations, the representative shall submit a copy of the proposed contract between the physicians or dentists and the carrier to the Attorney General, for his approval. The Attorney General shall provide written approval or disapproval of a petition or a proposed contract furnished by the representative no later than 30 days after receipt of the petition or proposed contract.

The substitute provides that a joint negotiation representative shall not engage in negotiations with a carrier unless the representative's petition has been approved in writing by the Attorney General, and a proposed contract between physicians or dentists and a carrier negotiated under this substitute shall not be implemented unless the Attorney General has approved the contract. The substitute further provides that either party may decline to negotiate or terminate negotiations. In either event, the representative shall so notify the Attorney General.

The Attorney General shall approve a petition or a proposed contract if he determines that the petition or proposed contract demonstrates that the benefits which are likely to result from the proposed joint negotiations or contract, as applicable, outweigh the disadvantages attributable to a reduction in competition that may result from the proposed joint negotiations. In making his determination, the Attorney General shall consider physician or dentist distribution by specialty and its effect on competition in the geographic service area of the carrier.

The substitute provides that its provisions shall not be construed to:

(1) permit two or more physicians or dentists to jointly engage in a coordinated cessation, reduction or limitation of the health care or dental services which they provide;

(2) permit two or more physicians or dentists to meet or communicate in order to jointly negotiate a requirement that at least one of the physicians or dentists, as a condition of participation with a carrier, be allowed to participate in all of the products offered by the carrier;

(3) permit two or more physicians or dentists to jointly negotiate with a carrier to exclude, limit or otherwise restrict a non-physician or non-dentist health care provider from participating in the carrier's

health benefits or dental plan based substantially on the fact that the health care provider is not a physician or dentist, unless that exclusion, limitation or restriction is otherwise permitted by law;

(4) prohibit or restrict activity by physicians or dentists that is sanctioned under federal or State law or subject such activity to the requirements of this act;

(5) affect governmental approval of, or otherwise restrict activity by, physicians or dentists that is not prohibited under federal antitrust law; or

(6) require approval of physician or dentist contract terms to the extent that the terms are exempt from State regulation under ERISA.

The substitute provides that its provisions shall not apply to a health benefits or dental plan which is certified by the Commissioner of Human Services to the Attorney General as providing covered services exclusively or primarily to persons who are eligible for Medicaid, NJ KidCare or NJ FamilyCare.

The substitute requires the Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, to report to the Governor and the Legislature no later than four years after its effective date on its implementation, and to include in that report an assessment of the impact that the substitute has had on health insurance premiums in the State. The report shall also include the Attorney General's recommendations as to whether the provisions of the substitute shall be expanded to include other types of health care professionals and facilities.

The Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, is further directed to report to the Governor and the Legislature no later than five years after the effective date of the substitute with his recommendation as to whether the provisions of the substitute shall be made permanent.

The substitute, which takes effect 90 days after enactment, is to expire six years after the effective date; however, it stipulates that its expiration shall not impair any contract negotiated pursuant to the substitute that is in effect on the date of expiration.

This substitute is identical to the Assembly Committee Substitute for Assembly Bill Nos. 2169, 2241 and 464 (Asselta/Doria/Chatzidakis/Conaway/Connors), which the committee also reported without recommendation on this date.

ASSEMBLY, No. 2169

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MARCH 2, 2000

Sponsored by:

Assemblyman LARRY CHATZIDAKIS

District 8 (Atlantic, Burlington and Camden)

SYNOPSIS

Allows physicians to jointly negotiate with health benefits plans over contractual terms and conditions.

CURRENT VERSION OF TEXT

As introduced.



A2169 CHATZIDAKIS

2

1 AN ACT providing for certain joint negotiations by physicians with
2 health benefits plans and supplementing Title 52 of the Revised
3 Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. As used in this act:

9 "Carrier" means an insurance company, health service corporation,
10 hospital service corporation, medical service corporation or health
11 maintenance organization which is authorized to issue health benefits
12 plans in this State.

13 "Covered person" means a person on whose behalf a carrier which
14 offers a health benefits plan is obligated to pay benefits or provide
15 services pursuant to the plan.

16 "Covered service" means a health care service provided to a
17 covered person under a health benefits plan for which the carrier is
18 obligated to pay benefits or provide services.

19 "Health benefits plan" means a plan which pays or provides hospital
20 and medical expense benefits for covered services, and is delivered or
21 issued for delivery in this State by or through a carrier. For the
22 purposes of this act, health benefits plan shall not include the following
23 plans, policies or contracts: Medicare supplement coverage and risk
24 contracts, accident only, specified disease or other limited benefit,
25 credit, disability, long-term care, CHAMPUS supplement coverage,
26 coverage arising out of a workers' compensation or similar law,
27 automobile medical payment insurance, personal injury protection
28 insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.),
29 dental or vision care coverage only, or hospital expense or
30 confinement indemnity coverage only.

31 "Physician" means a person who is licensed to practice medicine or
32 surgery, including podiatric medicine, by the State Board of Medical
33 Examiners in accordance with the provisions of Title 45 of the Revised
34 Statutes.

35 "Physicians' representative" means a third party, including a
36 physician engaging in joint negotiations under this act, that is
37 authorized by two or more physicians to negotiate on their behalf with
38 a health benefits plan over the terms and conditions of a contract that
39 affects those physicians.

40 "Utilization management" means a system for reviewing the
41 appropriate and efficient allocation of health care services under a
42 health benefits plan in accordance with specific guidelines, for the
43 purpose of determining whether, or to what extent, a health care
44 service that has been provided or is proposed to be provided to a
45 covered person is to be covered under the health benefits plan.

- 1 2. Two or more competing physicians who are practicing in the
2 service area of a health benefits plan may meet and communicate in
3 order to jointly negotiate one or more of the following terms or
4 conditions of a contract with the health benefits plan:
- 5 a. practices and procedures to assess and improve the delivery of
6 effective, cost-efficient preventive health care services, including, but
7 not limited to, childhood immunizations, prenatal care, and
8 mammograms and other cancer-screening tests or procedures;
 - 9 b. practices and procedures to encourage early detection and
10 effective, cost-efficient management of diseases and illnesses in
11 children;
 - 12 c. practices and procedures to assess and improve the delivery of
13 women's medical and health care, including, but not limited to, care for
14 menopause and osteoporosis;
 - 15 d. clinical criteria for effective, cost-efficient disease management
16 programs, including management programs for diabetes, asthma and
17 cardiovascular disease;
 - 18 e. practices and procedures to encourage and promote patient
19 education and treatment compliance, including involvement by a parent
20 with a child's health care;
 - 21 f. practices and procedures to identify, correct and prevent
22 potentially fraudulent activities;
 - 23 g. practices and procedures for the effective, cost-efficient use of
24 outpatient surgery;
 - 25 h. clinical practice guidelines and coverage criteria;
 - 26 i. administrative procedures, including, but not limited to, methods
27 and timing of payment to physicians for services;
 - 28 j. procedures for resolving disputes between physicians and the
29 health benefits plan;
 - 30 k. procedures for referring patients;
 - 31 l. the formulation and application of physician reimbursement
32 methodology;
 - 33 m. quality assurance activities;
 - 34 n. utilization management procedures;
 - 35 o. criteria used by the health benefits plan to select and terminate
36 physicians; or
 - 37 p. the inclusion or alteration of a contractual term or condition,
38 except when the inclusion or alteration is required by a federal or State
39 regulation concerning that term or condition; however, the restriction
40 shall not limit physician rights to jointly petition the federal or State
41 government, as applicable, to change the regulation.
- 42
- 43 3. Except as provided in section 4 of this act, two or more
44 competing physicians who are practicing in the service area of a health
45 benefits plan shall not meet and communicate in order to jointly
46 negotiate any of the following terms or conditions of a contract with

1 the health benefits plan:

2 a. the fee or price for a physician service, including those
3 determined by the application of a reimbursement methodology;

4 b. the conversion factors in a resource-based relative value scale or
5 similar reimbursement methodology;

6 c. the amount of a discount on the price of a service provided by a
7 physician; or

8 d. the dollar amount of capitation or fixed payment for physician
9 services provided to a covered person.

10

11 4. a. Notwithstanding the provisions of section 3 of this act to the
12 contrary, two or more competing physicians who are practicing in the
13 service area of a health benefits plan may jointly negotiate any of the
14 terms or conditions of a contract with the health benefits plan that are
15 specified in that section upon a finding by the Attorney General, in
16 consultation with the Commissioners of Banking and Insurance and
17 Health and Senior Services, that the health benefits plan has substantial
18 market power in its service area and that any of the terms or
19 conditions pose an actual or potential threat to the quality and
20 availability of patient care among covered persons.

21 b. The Department of Banking and Insurance, in consultation with
22 the Department of Health and Senior Services, shall have the authority
23 to collect and investigate such information as it reasonably believes is
24 necessary to determine, on an annual basis:

25 (1) the average number of covered lives per month per county by
26 every health benefits plan in the State; and

27 (2) the impact of the provisions of this section on average physician
28 fees in the State.

29 The Department of Banking and Insurance shall provide this
30 information to the Attorney General on an annual basis.

31 c. The provisions of this subsection shall not apply to a health
32 benefits plan which is certified by the Commissioner of Human
33 Services to the Attorney General as providing covered services
34 exclusively or primarily to persons who are eligible for medical
35 assistance under P.L.1968, c.413 (C.30:4D-1 et seq.) or the Children's
36 Health Care Coverage Program under P.L.1997, c.272 (C.30:4I-1 et
37 seq.).

38

39 5. The exercise of joint negotiation rights by two or more
40 competing physicians who are practicing in the service area of a health
41 benefits plan pursuant to sections 2 and 4 of this act shall conform to
42 the following criteria:

43 a. the physicians may communicate with each other concerning any
44 contractual term or condition to be negotiated with the health benefits
45 plan;

46 b. the physicians may communicate with the physicians'

1 representative authorized to negotiate on their behalf with the health
2 benefits plan concerning any contractual term or condition;

3 c. the physicians' representative shall be the sole party authorized
4 to negotiate with the health benefits plan on behalf of the physicians
5 as a group;

6 d. the physicians may, at the option of each physician, agree to be
7 bound by the terms and conditions negotiated by the physicians'
8 representative; and

9 e. when communicating or negotiating with a physicians'
10 representative, a health benefits plan may offer different contractual
11 terms or conditions to, or may contract with, individual competing
12 physicians.

13

14 6. A person or entity which proposes to act as a physicians'
15 representative shall satisfy the following requirements:

16 a. Before entering into negotiations with a health benefits plan on
17 behalf of two or more competing physicians over a contractual term
18 or condition, the physicians' representative shall submit to the
19 Attorney General, for his approval pursuant to section 7 of this act, on
20 a form and in a manner prescribed by the Attorney General, a report
21 which identifies:

22 (1) the representative's name and business address;

23 (2) the names and business addresses of each physician who will be
24 represented by the identified representative;

25 (3) the ratio of the physicians requesting joint representation to the
26 total number of physicians who are practicing within the geographic
27 service area of the health benefits plan;

28 (4) the health benefits plan with which the representative proposes
29 to enter into negotiations on behalf of the identified physicians;

30 (5) the intended subject matter of the proposed negotiations with
31 the identified health benefits plan;

32 (6) the representative's plan of operation and procedures to ensure
33 compliance with the provisions of this act;

34 (7) the anticipated effect of the proposed joint negotiations on the
35 quality and availability of health care among covered persons; and

36 (8) the anticipated benefits of a contract between the identified
37 physicians and health benefits plan.

38 The physicians' representative, upon submitting the report, shall pay
39 a fee to the Attorney General in an amount, as determined by the
40 Attorney General, which shall be reasonable and necessary to cover
41 the costs associated with carrying out the provisions of this act.

42 b. After the physicians' representative and the health benefits plan
43 identified pursuant to subsection a. of this section have reached an
44 agreement on the contractual terms or conditions that were the subject
45 matter of their negotiations, the physicians' representative shall submit
46 to the Attorney General, for his approval in accordance with the

1 provisions of section 7 of this act, a copy of the proposed contract
2 between the physicians identified pursuant to subsection a. of this
3 section and the health benefits plan, as well as any plan of action which
4 the physicians' representative and the health benefits plan may formally
5 agree to for the purpose of implementing the terms and conditions of
6 the contract.

7 c. Within 14 days after a health benefits plan notifies a physicians'
8 representative of its decision to decline or terminate negotiations
9 entered into pursuant to this act, or after the date that a physicians'
10 representative requests that a health benefits plan enter into such
11 negotiations to which request the plan fails to respond, the physicians'
12 representative shall report to the Attorney General that the
13 negotiations have ended, on a form and in a manner to be prescribed
14 by the Attorney General. The physicians' representative may resume
15 negotiations with the health benefits plan no later than 60 days after
16 reporting to the Attorney General that the negotiations have ended, on
17 the basis of the report submitted to the Attorney General pursuant to
18 subsection a. of this section and approved by the Attorney General in
19 accordance with the provisions of section 7 of this act. After that
20 date, the physicians' representative shall be required to submit a new
21 report and pay an additional fee to the Attorney General pursuant to
22 subsection a. of this section, in order to engage in negotiations with
23 the health benefits plan under this act.

24
25 7. a. The Attorney General shall provide written approval or
26 disapproval of a report or a proposed contract furnished by a
27 physicians' representative pursuant to section 6 of this act no later than
28 30 days after receipt of the report or proposed contract, as applicable.
29 If the Attorney General fails to provide written approval or
30 disapproval within this time period, the physicians' representative may
31 petition a court of competent jurisdiction for an order to require the
32 Attorney General to take such action. If the Attorney General
33 disapproves the report or the proposed contract, he shall forward a
34 written explanation of any deficiencies therein to the physicians'
35 representative along with a statement of the specific remedial measures
36 by which those deficiencies may be corrected. A physicians'
37 representative shall not engage in negotiations with a health benefits
38 plan over any contractual term or condition unless the report furnished
39 by the physicians' representative has been approved in writing by the
40 Attorney General, nor shall a proposed contract between two or more
41 competing physicians and a health benefits plan be implemented unless
42 the Attorney General has approved the contract.

43 b. The Attorney General shall approve a report or a proposed
44 contract furnished by a physicians' representative pursuant to section
45 6 of this act if the Attorney General determines that the report or
46 proposed contract demonstrates that the benefits which are likely to

1 result from the proposed joint negotiations over a contractual term or
2 condition or the proposed contract, as applicable, outweigh the
3 disadvantages attributable to a reduction in competition that may
4 result from the proposed joint negotiations. In making his
5 determination, the Attorney General shall consider physician
6 distribution by specialty and its effect on competition in the geographic
7 service area of the health benefits plan. The Attorney General shall
8 not approve a report furnished by a physicians' representative pursuant
9 to section 6 of this act if the physicians' representative proposes to
10 engage in negotiations with a health benefits plan on behalf of more
11 than 10% of the total number of physicians practicing in the
12 geographic service area of the health benefits plan, unless the Attorney
13 General determines, consistent with the provisions of this act, that
14 conditions relating to the quality and availability of health care among
15 covered persons in the geographic service area of the health benefits
16 plan support the inclusion of a higher percentage of practicing
17 physicians in those joint negotiations.

18 c. The Attorney General's written approval of a report which is
19 furnished by a physicians' representative under section 6 of this act
20 shall be effective for all subsequent negotiations between the
21 physicians' representative and the identified health benefits plan,
22 subject to the provisions of subsection c. of section 6 of this act.

23

24 8. a. The provisions of this act shall not be construed to permit two
25 or more physicians to:

26 (1) jointly engage in a coordinated cessation, reduction or limitation
27 of the health care services which they provide;

28 (2) meet or communicate in order to jointly negotiate a requirement
29 that at least one of the physicians, as a condition of participating in a
30 health benefits plan, be allowed to participate in all of the products
31 offered by the health benefits plan; or

32 (3) jointly negotiate with a health benefits plan to exclude, limit or
33 otherwise restrict a non-physician health care provider from
34 participating in a health benefits plan based substantially on the fact
35 that the health care provider is not a physician, unless that exclusion,
36 limitation or restriction is otherwise permitted by law.

37 b. Prior to entering into negotiations with a health benefits plan on
38 behalf of two or more competing physicians over a contractual term
39 or condition, a physicians' representative shall notify the physicians in
40 writing of the provisions of this section and advise them as to their
41 potential legal liability if they engage in a joint action that is not
42 authorized under this act.

43

44 9. The Attorney General, in consultation with the Commissioners
45 of Banking and Insurance and Health and Senior Services and pursuant
46 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1

1 et seq.), shall adopt rules and regulations to effectuate the purposes of
2 this act.

3

4 10. This act shall take effect 90 days after enactment, except that
5 the Attorney General, in consultation with the Commissioners of
6 Banking and Insurance and Health and Senior Services, may take such
7 anticipatory administrative action in advance as shall be necessary to
8 implement the act.

9

10

11

STATEMENT

12

13 The purpose of this bill is to provide physicians with the right to
14 engage in joint negotiations over the terms and conditions of their
15 contracts with health benefits plans. The bill is modeled generally after
16 legislation which was enacted into law in Texas (Senate Bill No. 1468,
17 on June 20, 1999).

18 A "physician" is defined in the bill as a person licensed to practice
19 medicine or surgery, including podiatric medicine, by the State Board
20 of Medical Examiners.

21 The bill permits physicians who are practicing in the geographic
22 service area of a health benefits plan to jointly negotiate with the plan,
23 through a physicians' representative who is approved by the Attorney
24 General to act on their behalf, over the terms and conditions of a
25 proposed contract, which, if agreed to by the parties to the
26 negotiation, must be approved by the Attorney General before being
27 implemented. These terms and conditions include:

28 C practices and procedures to assess and improve the delivery of
29 effective, cost-efficient preventive health care services;

30 C practices and procedures to encourage early detection and effective,
31 cost-efficient management of diseases and illnesses in children;

32 C practices and procedures to assess and improve the delivery of
33 women's medical and health care;

34 C clinical criteria for effective, cost-efficient disease management
35 programs;

36 C practices and procedures to encourage and promote patient
37 education and treatment compliance;

38 C practices and procedures to identify, correct and prevent potentially
39 fraudulent activities;

40 C practices and procedures for the effective, cost-efficient use of
41 outpatient surgery;

42 C clinical practice guidelines and coverage criteria;

43 C administrative procedures, including, but not limited to, methods
44 and timing of payment to physicians for services;

45 C procedures for resolving disputes between physicians and the plan;

46 C patient referral procedures;

- 1 C the formulation and application of physician reimbursement
- 2 methodology;
- 3 C quality assurance activities;
- 4 C utilization management procedures;
- 5 C physician selection and termination criteria used by the plan; and
- 6 C the inclusion or alteration of a contractual term or condition with
- 7 the plan, except when the inclusion or alteration is required by a
- 8 federal or State regulation regarding that term or condition.

9 In addition, the bill provides that the following terms and conditions
10 of a proposed contract may be subject to such joint negotiations if the
11 Attorney General, in consultation with the Commissioners of Banking
12 and Insurance and Health and Senior Services, finds that the health
13 benefits plan has substantial market power within its service area and
14 that any of the terms or conditions pose an actual or potential threat
15 to the quality and availability of health care among covered persons:

- 16 C the fee or price for a service provided by a physician, including
- 17 those determined by the application of a reimbursement
- 18 methodology;
- 19 C the conversion factors in a resource-based relative value scale or
- 20 similar reimbursement methodology;
- 21 C the amount of a discount on the price of a physician service; and
- 22 C the dollar amount of capitation or fixed payment for physician
- 23 services provided to a covered person.

24 The bill stipulates that a physicians' representative shall not enter
25 into negotiations with a health benefits plan on behalf of more than
26 10% of the total number of physicians practicing in the geographic
27 service area of the health benefits plan, unless the Attorney General
28 determines, consistent with the provisions of this bill, that conditions
29 relating to the quality and availability of health care among covered
30 persons in the geographic service area of the plan support the inclusion
31 of a higher percentage of practicing physicians in those joint
32 negotiations.

33 Also, the bill explicitly prohibits physicians from:

- 34 C jointly engaging in a coordinated cessation, reduction or limitation
- 35 of health care services;
- 36 C meeting or communicating in order to jointly negotiate a
- 37 requirement that at least one of the physicians, as a condition of
- 38 participating in a health benefits plan, be allowed to participate in
- 39 all of the products offered by the health benefits plan; or
- 40 C jointly negotiating with a health benefits plan to exclude, limit or
- 41 otherwise restrict a non-physician health care provider from
- 42 participating in a health benefits plan based substantially on the fact
- 43 that the health care provider is not a physician, unless that
- 44 exclusion, limitation or restriction is otherwise permitted by law.

ASSEMBLY, No. 2241

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MARCH 20, 2000

Sponsored by:

Assemblyman NICHOLAS ASSELTA

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman JOSEPH V. DORIA, JR.

District 31 (Hudson)

Co-Sponsored by:

Assemblymen Conaway, LeFevre, Gusciora and Assemblywoman Gill

SYNOPSIS

"Health Care Provider Joint Negotiation Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/15/2001)

1 AN ACT authorizing health care providers to enter into joint
2 negotiations with health insurance carriers and supplementing Title
3 52 of the Revised Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the "Health Care
9 Provider Joint Negotiation Act."

10

11 2. The Legislature finds and declares that:

12 a. Active, robust and fully competitive markets for health care
13 services provide the best opportunity for the residents of this State to
14 receive high-quality health care services at an appropriate cost;

15 b. A substantial amount of health care services in this State is
16 purchased for the benefit of patients by health insurance carriers
17 engaged in the financing of health care services or is otherwise
18 delivered subject to the terms of agreements between carriers and
19 health care providers;

20 c. Health insurance carriers are able to control the flow of patients
21 to health care providers through compelling financial incentives for
22 patients in their health benefits plans to utilize only the services of
23 providers with whom the carriers have contracted;

24 d. Carriers also control the health care services rendered to patients
25 through utilization management and other managed care tools and
26 associated coverage and payment policies;

27 e. The power of health insurance carriers in the markets of this
28 State for health care services has become great enough to create a
29 competitive imbalance, reducing levels of competition and threatening
30 the availability of high-quality, cost-effective health care;

31 f. In many areas of this State, the health care insurance market is
32 dominated by one or two health insurance carriers, with some carriers
33 controlling over 50% of an area's market;

34 g. Carriers are often able to virtually dictate the terms of the
35 contracts that they offer physicians and other health care providers and
36 commonly offer these contracts on a take-it-or-leave-it basis;

37 h. The power of carriers to unilaterally impose provider contract
38 terms jeopardizes the ability of physicians and other health care
39 providers to deliver the superior quality health care services
40 traditionally available in this State;

41 i. Physicians and other health care providers do not have sufficient
42 market power to reject unfair provider contract terms offered by
43 carriers that impede their ability to deliver medically appropriate care
44 without undue delay or difficulties;

45 j. Inadequate reimbursement and other unfair payment terms offered
46 by carriers adversely affect the quality of patient care and access to

1 care by reducing the resources that health care providers can devote
2 to patient care and decreasing the time that providers are able to spend
3 with their patients;

4 k. Inequitable reimbursement and other unfair payment terms also
5 endanger the health care infrastructure and medical progress by
6 diverting capital needed for reinvestment in the health care delivery
7 system, curtailing the purchase of state-of-the-art technology, the
8 pursuit of medical research, and expansion of medical services, all to
9 the detriment of the residents of this State;

10 l. The inevitable collateral reduction and migration of the health
11 care work force will also have negative consequences for the economy
12 of this State;

13 m. Empowering independent health care providers to jointly
14 negotiate with health insurance carriers as provided in this act will help
15 restore the competitive balance and improve competition in the
16 markets for health care services in this State, thereby providing
17 benefits for consumers, health care providers and less dominant
18 carriers;

19 n. This act is necessary and proper, and constitutes an appropriate
20 exercise of the authority of this State to regulate the business of
21 insurance and the delivery of health care services;

22 o. The pro-competitive and other benefits of the joint negotiations
23 and related joint activity authorized by this act, including, but not
24 limited to, restoring the competitive balance in the market for health
25 care services, protecting access to quality patient care, promoting the
26 health care infrastructure and medical progress, and improving
27 communications, outweigh any potential anti-competitive effects of
28 this act; and

29 p. It is the intention of the Legislature to authorize independent
30 health care providers to jointly negotiate with health insurance carriers
31 and to qualify such joint negotiations and related joint activities for the
32 State-action exemption to the federal antitrust laws through the
33 articulated State policy and active supervision provided under this act.
34

35 3. As used in this act:

36 "Carrier" means an insurance company, health service corporation,
37 hospital service corporation, medical service corporation or health
38 maintenance organization authorized to issue health benefits plans in
39 this State.

40 "Carrier affiliate" means a carrier that is affiliated with another
41 entity by either the carrier or entity having a 5% or greater, direct or
42 indirect, ownership or investment interest in the other through equity
43 or debt, or by other means.

44 "Commissioner" means the Commissioner of Banking and
45 Insurance.

46 "Covered person" means a person on whose behalf a carrier offering

1 the plan is obligated to pay benefits or provide services pursuant to the
2 health benefits plan.

3 "Covered service" means a health care service provided to a
4 covered person under a health benefits plan for which the carrier is
5 obligated to pay benefits or provide services.

6 "Health benefits plan" means a benefits plan which pays or provides
7 hospital and medical expense benefits for covered services, and is
8 delivered or issued for delivery in this State by or through a carrier,
9 except in the case of a self-funded health benefits plan. For the
10 purposes of this act, health benefits plan shall not include the following
11 plans, policies or contracts: Medicare supplement coverage and risk
12 contracts, accident only, specified disease or other limited benefit,
13 credit, disability, long-term care, CHAMPUS supplement coverage,
14 coverage arising out of a workers' compensation or similar law,
15 automobile medical payment insurance, personal injury protection
16 insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.),
17 dental or vision care coverage only, or hospital expense or
18 confinement indemnity coverage only.

19 "Health care provider" means an individual or entity which, acting
20 within the scope of its licensure or certification, provides a covered
21 service defined by the health benefits plan, and includes, but is not
22 limited to, a physician and other health care professionals licensed
23 pursuant to Title 45 of the Revised Statutes, and a hospital and other
24 health care facilities licensed pursuant to Title 26 of the Revised
25 Statutes, and medical equipment suppliers.

26 "Health care service" means services for the diagnosis, prevention,
27 treatment, cure or relief of a health condition, injury, disease or illness,
28 including, but not limited to: the professional and technical
29 component of professional services; supplies, drugs and biologicals;
30 diagnostic x-rays, laboratory and other diagnostic tests; preventive
31 screening services and tests, including pap smears and mammograms;
32 x-ray, radium and radioactive isotope therapy; surgical dressings;
33 devices for the reduction of fractures; durable medical equipment;
34 braces; trusses; artificial limbs and eyes; dialysis services; home health
35 services; and hospital and other health care facility services.

36 "Health maintenance organization" means a health maintenance
37 organization operating pursuant to P.L.1973, c.337 (C.26:2J-1 et
38 seq.).

39 "Joint negotiation" means negotiation with a carrier by two or more
40 independent health care providers acting together as part of a formal
41 group or other entity.

42 "Joint negotiation representative" means a representative selected
43 by two or more independent health care providers to engage in joint
44 negotiations with a carrier on their behalf.

45 "Point-of-service plan" means a health benefits plan that allows a
46 covered person to receive covered services from out-of-network

1 health care providers but may require that a subscriber pay a higher
2 deductible or copayment and higher premium for the plan.

3 "Preferred provider organization" means a health benefits plan other
4 than a health maintenance organization or a point-of-service plan that
5 integrates the financing and delivery of appropriate health care services
6 to covered persons by arrangements with members of the provider
7 network and financial incentives for covered persons to use those
8 health care providers.

9 "Provider contract" means an agreement between a health care
10 provider and a carrier setting forth the terms and conditions under
11 which the provider is to deliver health care services to covered persons
12 of the carrier. This term does not include employment contracts
13 between a carrier and a health care professional.

14 "Provider network" means a group of health care providers who
15 have provider contracts with a carrier.

16 "Self-funded health benefits plan" means a health benefits plan that
17 provides for the assumption of the cost, or spreads the risk of loss,
18 resulting from health care services provided to covered persons by an
19 employer, union or other sponsor, substantially out of the current
20 revenues, assets or other funds of the sponsor.

21 "Subscriber" means, in the case of a group contract, a person whose
22 employment or other status, except family status, is the basis for
23 eligibility for enrollment by the carrier or, in the case of an individual
24 contract, the person in whose name the contract is issued.

25 "Third party administrator" means an entity that provides utilization
26 management, provider network credentialing or other administrative
27 services for a carrier or a self-funded health benefits plan.

28 "Utilization management" means a system for reviewing the
29 appropriate and efficient allocation of health care services under a
30 health benefits plan according to specified guidelines, in order to
31 recommend or determine whether, or to what extent, a health care
32 service given or proposed to be given to a covered person should or
33 will be reimbursed, covered, paid for, or otherwise provided under the
34 health benefits plan. The system may include: preadmission
35 certification, the application of practice guidelines, continued stay
36 review, discharge planning, preauthorization of ambulatory care
37 procedures and retrospective review.

38

39 4. Independent health care providers may jointly negotiate with a
40 carrier and engage in related joint activity, as provided in sections 7
41 and 8 of this act, regarding non-fee-related matters which may affect
42 patient care, including, but not limited to any of the following:

43 a. the definition of medical necessity and other conditions of
44 coverage;

45 b. utilization management criteria and procedures;

46 c. clinical practice guidelines;

- 1 d. preventive care and other medical management policies;
- 2 e. patient referral standards and procedures, including, but not
- 3 limited to, those applicable to out-of-network referrals;
- 4 f. drug formularies and standards and procedures for prescribing
- 5 off-formulary drugs;
- 6 g. quality assurance programs;
- 7 h. respective health care provider and carrier liability for the
- 8 treatment or lack of treatment of covered persons;
- 9 i. the methods and timing of payments, including, but not
- 10 limited to, interest and penalties for late payments;
- 11 j. other administrative procedures, including, but not limited to,
- 12 covered persons eligibility verification systems and claim
- 13 documentation requirements;
- 14 k. credentialing standards and procedures for the selection,
- 15 retention and termination of participating health care providers;
- 16 l. mechanisms for resolving disputes between the carrier and health
- 17 care providers, including, but not limited to, the appeals process for
- 18 utilization management and credentialing determinations; or
- 19 m. the health benefits plans sold or administered by the carrier in
- 20 which the health care providers are required to participate.
- 21
- 22 5. a. When a carrier has substantial market power over independent
- 23 health care providers, the providers may jointly negotiate with the
- 24 carrier and engage in related joint activity, as provided in sections 7
- 25 and 8 of this act regarding fees and fee-related matters, including, but
- 26 not limited to, any of the following:
 - 27 (1) the amount of payment or the methodology for determining the
 - 28 payment for a health care service;
 - 29 (2) the conversion factor for a resource-based relative value scale
 - 30 or similar reimbursement methodology for health care services;
 - 31 (3) the amount of any discount on the price of a health care
 - 32 service;
 - 33 (4) the procedure code or other description of a health care service
 - 34 covered by a payment;
 - 35 (5) the amount of a bonus related to the provision of health care
 - 36 services or a withholding from the payment due for a health care
 - 37 service; or
 - 38 (6) the amount of any other component of the reimbursement
 - 39 methodology for a health care service.
- 40 b. A carrier has substantial market power over health care
- 41 providers when:
 - 42 (1) the carrier's market share in the comprehensive health care
 - 43 insurance market or a relevant segment of that market, alone or in
 - 44 combination with the market shares of one or more carrier affiliates,
 - 45 exceeds either 15% of the total number of covered persons in the
 - 46 geographic service area of the providers seeking to jointly negotiate

1 or 25,000 covered persons, whichever is less; or

2 (2) the Attorney General determines that the market power of the
3 carrier in the relevant product and geographic markets for the services
4 of the providers seeking to jointly negotiate significantly exceeds the
5 countervailing market power of the providers acting individually.

6 c. As used in this act:

7 (1) "Comprehensive health care insurance market" includes all
8 health benefits plans which provide comprehensive coverage, alone or
9 in combination with other plans sold together as a package, including,
10 but not limited to, indemnity, health maintenance organization,
11 preferred provider organization and point-of-service plans, and
12 including self-funded health benefits plans which provide
13 comprehensive coverage; and

14 (2) "Relevant market segments in the comprehensive health care
15 insurance market" includes the following:

16 (a) carrier health benefits plans and self-funded health benefits
17 plans;

18 (b) within the carrier product category, private health insurance,
19 Medicare health maintenance organization contracts and preferred
20 provider organization and point-of-service plans and Medicaid health
21 maintenance organization contracts;

22 (c) within the private health insurance category, indemnity, health
23 maintenance organization, preferred provider organization and point-
24 of-service plans; and

25 (d) such other segments as the Attorney General determines are
26 appropriate for purposes of determining whether a carrier has
27 substantial market power.

28 d. (1) By March 31 of each year, the Commissioner of Banking and
29 Insurance shall calculate the number of covered persons of each carrier
30 and its affiliates in the comprehensive health care insurance market and
31 in each relevant market segment for each county. The commissioner
32 shall make these calculations by averaging quarterly data from the
33 preceding year unless the commissioner determines that it would be
34 more appropriate to use other data and information. The
35 commissioner may recalculate the number of covered persons earlier
36 than the required annual recalculation when the commissioner deems
37 it appropriate to do so.

38 (2) Recipients of benefits under Medicare, Medicaid or other
39 governmental programs shall not be counted as covered persons in the
40 health care insurance market unless they receive their governmental
41 program coverage through a health maintenance organization or
42 another carrier health benefits plan.

43 (3) When calculating the market power of a carrier or carrier
44 affiliate that has third party administrator products, the covered lives
45 of the carriers and self-funded health benefits plans for whom the
46 carrier or carrier affiliate provides administrative services shall be

1 treated as the covered persons of the carrier or carrier affiliate.

2 (4) The commissioner's calculation of covered persons shall be
3 used for purposes of determining the market power of carriers in the
4 comprehensive health care insurance market from the date of the
5 determination until the next annual determination or until the
6 commissioner recalculates the determination, whichever is earlier.

7 (5) In cases where the relevant geographic market is multiple
8 counties, the commissioner's calculations for those counties shall be
9 aggregated when counting the covered persons of the carrier whose
10 market power is being evaluated.

11 (6) The commissioner shall collect and investigate information
12 necessary to calculate the covered persons of carriers and their
13 affiliates.

14

15 6. The following requirements shall apply to the exercise of joint
16 negotiation rights and related activity under this act:

17 a. Health care providers shall select the members of their joint
18 negotiation group by mutual agreement.

19 b. Health care providers shall designate a joint negotiation
20 representative as the sole party authorized to negotiate with the carrier
21 on behalf of the health care providers as a group.

22 c. Health care providers may communicate with each other and
23 their joint negotiation representative with respect to the matters to be
24 negotiated with the carrier.

25 d. Health care providers may agree upon a proposal to be
26 presented by their joint negotiation representative to the carrier.

27 e. Health care providers may agree to be bound by the terms and
28 conditions negotiated by their joint negotiation representative.

29 f. The health care providers' joint negotiation representative may
30 provide the health care providers with the results of negotiations with
31 the carrier and an evaluation of any offer made by the carrier.

32 g. The health care providers' joint negotiation representative may
33 reject a contract proposal by a carrier on behalf of the health care
34 providers as long as the health care providers remain free to
35 individually contract with the carrier.

36 h. The health care providers' joint negotiation representative shall
37 advise the health care providers of the provisions of this act and shall
38 inform the health care providers of the potential for legal action
39 against health care providers who violate federal antitrust law.

40 i. Health care providers may not negotiate the inclusion or
41 alteration of terms and conditions to the extent the terms or conditions
42 are required or prohibited by federal or State statute or regulation.
43 This subsection shall not be construed to limit the right of health care
44 providers to jointly petition federal or State government for a change
45 in the statute or regulation.

1 7. a. Before engaging in any joint negotiation with a carrier, health
2 care providers shall obtain the Attorney General's approval to proceed
3 with the negotiations by submitting to the Attorney General a petition
4 seeking approval, which shall include:

5 (1) the name and business address of the health care providers'
6 joint negotiation representative;

7 (2) the names and business addresses of the health care providers
8 petitioning to jointly negotiate;

9 (3) the name and business address of any carrier with which the
10 petitioning providers seek to jointly negotiate;

11 (4) the proposed subject matter of the negotiations or discussions
12 with the carrier;

13 (5) the proportionate relationship of the health care providers to
14 the total population of health care providers in the relevant geographic
15 service area of the providers, by providers, provider type and
16 specialty;

17 (6) in the case of a petition seeking approval of joint negotiations
18 regarding one or more fee or fee-related terms, a statement of the
19 reasons why the carrier has substantial market power over the health
20 care providers;

21 (7) a statement of the pro-competitive and other benefits of the
22 proposed negotiations;

23 (8) the health care provider's joint negotiation representative's plan
24 of operation and procedures to ensure compliance with this act; and

25 (9) such other data, information and documents as the petitioners
26 desire to submit in support of their petition.

27 b. The health care providers shall supplement a petition submitted
28 under subsection a. of this section as new information becomes
29 available that indicates that the subject matter of the proposed
30 negotiations with the carrier has or will materially change and shall
31 obtain the Attorney General's approval of material changes. The
32 petition seeking approval shall include:

33 (1) the Attorney General's file reference for the original petition for
34 approval of joint negotiations;

35 (2) the proposed new subject matter;

36 (3) the information required by paragraphs (6) and (7) of
37 subsection a. of this section with respect to the proposed new subject
38 matter; and

39 (4) such other data, information and documents as the petitioners
40 desire to submit in support of their petition.

41 c. No provider contract terms negotiated under this act shall be
42 effective until the terms are approved by the Attorney General. The
43 petition seeking approval shall be jointly submitted to the Attorney
44 General by the health care providers and the carrier who are parties to
45 the contract. The petition shall include:

46 (1) the Attorney General's file reference for the original petition for

- 1 approval of joint negotiations;
- 2 (2) the negotiated provider contract terms;
- 3 (3) a statement of the pro-competitive and other benefits of the
- 4 negotiated provider contract terms; and
- 5 (4) such other data, information and documents as the petitioners
- 6 desire to submit in support of their petition.

7 d. Joint negotiations approved under this act may continue until the
8 carrier notifies the joint negotiation representative for the health care
9 providers that it declines to negotiate or is terminating negotiations.
10 If the carrier notifies the joint negotiation representative for the health
11 care providers that it desires to resume negotiations within 60 days of
12 the end of prior negotiations, the health care providers may renew the
13 previously approved negotiations without obtaining a separate
14 approval of the renewal from the Attorney General.

15
16 8. a. The Attorney General shall either approve or disapprove a
17 petition under section 7 of this act within 30 days after the filing. If
18 disapproved, the Attorney General shall furnish a written explanation
19 of any deficiencies along with a statement of specific remedial
20 measures as to how such deficiencies may be corrected.

21 b. (1) The Attorney General shall approve a petition under
22 subsections a. and b. of section 7 of this act if:

- 23 (i) the pro-competitive and other benefits of the joint negotiations
- 24 outweigh any anti-competitive effects; and
- 25 (ii) in the case of a petition seeking approval to jointly negotiate
- 26 one or more fee or fee-related terms, the carrier has substantial market
- 27 power over the health care providers.

28 (2) The Attorney General shall approve a petition under subsection
29 c. of section 7 of this act if:

- 30 (i) the pro-competitive and other benefits of the contract terms
- 31 outweigh any anti-competitive effects; and
- 32 (ii) the contract terms are consistent with other applicable
- 33 statutes and regulations.

34 (3) The pro-competitive and other benefits of joint negotiations or
35 negotiated provider contract terms may include, but shall not be
36 limited to:

- 37 (i) restoration of the competitive balance in the market for health
- 38 care services;
- 39 (ii) protections for access to quality patient care;
- 40 (iii) promotion of the health care infrastructure and medical
- 41 advancement; and
- 42 (iv) improved communications between health care providers
- 43 and carriers.

44 (4) When weighing the anti-competitive effects of provider
45 contract terms, the Attorney General may consider whether the terms:

- 46 (i) provide for excessive payments; or

1 (ii) contribute to the escalation of the cost of providing health
2 care services.

3 c. For the purpose of enabling the Attorney General to make the
4 findings and determinations required by this section, the Attorney
5 General may require the submission of such supplemental information
6 as the Attorney General deems necessary for that purpose.

7

8 9. a. In the case of a petition under subsections a. or b. of section
9 7 of this act, the Attorney General shall notify the carrier of the
10 petition and provide the carrier with the opportunity to submit written
11 comments within a specified time frame that does not extend beyond
12 the date by which the Attorney General is required to act on the
13 petition.

14 b. (1) Except as provided in subsection a. of this section, the
15 Attorney General shall not be required to provide public notice of a
16 petition under subsections a., b. or c. of section 7 of this act in order
17 to hold a public hearing on the petition or to otherwise accept public
18 comment on the petition.

19 (2) The Attorney General may, at his discretion, publish notice of
20 a petition for approval of provider contract terms in the New Jersey
21 Register and receive written comment from interested persons, so long
22 as the opportunity for public comment does not prevent the Attorney
23 General from acting on the petition within the time period set forth in
24 this act.

25

26 10. a. Within 30 days from the mailing by the Attorney General of
27 a notice of disapproval of a petition under section 7 of this act, the
28 petitioners may make a written application to the Attorney General for
29 a hearing.

30 b. Upon receipt of a timely written application for a hearing, the
31 Attorney General shall schedule and conduct a hearing in accordance
32 with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
33 1 et seq.). The hearing shall be held within 30 days of the application
34 unless the petitioner seeks an extension.

35 c. If the Attorney General does not issue a written approval or
36 disapproval of a petition under section 7 of this act within the required
37 time period, the parties to the petition shall have the right to petition
38 the court for a mandamus order requiring the Attorney General to
39 approve or disapprove the petition.

40 d. The sole parties with respect to any petition under section 7 of
41 this act shall be the petitioners and the Attorney General.
42 Notwithstanding any other provision of law to the contrary, the
43 Attorney General shall not be required to treat any other person as a
44 party and no other person shall be entitled to appeal the Attorney
45 General's determination.

1 11. a. All information and documents and copies thereof obtained
2 by or disclosed to the Attorney General or any other person in a
3 petition under section 7 of this act, or pursuant to a request for
4 supplemental information under subsection c. of section 8 of this act,
5 shall be treated confidentially, shall not be subject to subpoena and
6 shall not be made public or otherwise disclosed by the Attorney
7 General or any other person without the written consent of the
8 petitioners to whom the information pertains, except as provided in
9 subsection b. of this section.

10 b. (1) In the case of a petition under subsections a. or b. of section
11 7 of this act, the Attorney General may disclose the information
12 required to be submitted pursuant to paragraphs (1) through (4) of
13 subsection a. and paragraphs (1) and (2) of subsection b. of section 7
14 of this act.

15 (2) The Attorney General may disclose provider contracts
16 negotiated under this act provided that the Attorney General removes
17 or redacts those provider contract provisions that contain payment
18 rates and fees. The Attorney General may disclose payment rates and
19 fees to the commissioner, the insurance department of another state,
20 a law enforcement official of this State or any other state or agency of
21 the federal government, so long as the agency or office receiving the
22 information agrees in writing to treat the information confidentially
23 and in a matter consistent with this act.

24

25 12. A carrier shall negotiate in good faith with health care providers
26 regarding the terms of provider contracts pursuant to this act.

27

28 13. Nothing contained in this act shall be construed to:

29 a. prohibit or restrict activity by health care providers that is
30 sanctioned under federal or State law;

31 b. affect governmental approval of, or otherwise restrict activity
32 by, health care providers that is not prohibited under federal antitrust
33 law;

34 c. require approval of provider contract terms to the extent that the
35 terms are exempt from State regulation under section 514(a) of the
36 "Employee Retirement Income Security Act of 1974," Pub. L. 93-406
37 (29 U.S.C. s.1144(a)); or

38 d. expand a health care provider's scope of practice or require a
39 carrier to contract with any type or specialty of health care provider.

40

41 14. The Attorney General, in consultation with the Commissioners
42 of Banking and Insurance and Health and Senior Services and pursuant
43 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
44 et seq.), shall adopt rules and regulations to effectuate the purposes of
45 this act.

1 15. This act shall take effect on the 60th day after enactment;
2 however, the Attorney General, in consultation with the
3 Commissioners of Banking and Insurance and Health and Senior
4 Services, may take such anticipatory administrative action in advance
5 as is necessary to implement the act.

6
7
8 STATEMENT

9
10 This bill, which is designated the "Health Care Provider Joint
11 Negotiation Act," would permit independent physicians and other
12 health care providers to engage in joint negotiations over the terms
13 and conditions of their contracts with health insurance carriers. The
14 bill is generally modeled after Pennsylvania Senate Bill No. 1052 of
15 1999.

16 Specifically, the bill provides that independent health care providers
17 may jointly negotiate with a carrier and engage in related joint activity,
18 as provided in the bill, regarding non-fee-related matters which may
19 affect patient care, including, but not limited to any of the following:

- 20 -- the definition of medical necessity and other conditions of
21 coverage;
22 -- utilization management criteria and procedures;
23 -- clinical practice guidelines;
24 -- preventive care and other medical management policies;
25 -- patient referral standards and procedures, including, but not
26 limited to, those applicable to out-of-network referrals;
27 -- drug formularies and standards and procedures for prescribing
28 off-formulary drugs;
29 -- quality assurance programs;
30 -- respective health care provider and carrier liability for the
31 treatment or lack of treatment of covered persons;
32 -- the methods and timing of payments, including, but not
33 limited to, interest and penalties for late payments;
34 -- other administrative procedures, including, but not limited to,
35 covered persons eligibility verification systems and claim
36 documentation requirements;
37 -- credentialing standards and procedures for the selection,
38 retention and termination of participating health care providers;
39 -- mechanisms for resolving disputes between the carrier and health
40 care providers, including, but not limited to, the appeals process for
41 utilization management and credentialing determinations; or
42 -- the health benefits plans sold or administered by the carrier in
43 which the health care providers are required to participate.

44 The bill further provides that when a carrier has substantial market
45 power over independent health care providers, the providers may
46 jointly negotiate with the carrier and engage in related joint activity as

1 provided in the bill regarding fees and fee-related matters, including,
2 but not limited to, any of the following:

3 -- the amount of payment or the methodology for determining the
4 payment for a health care service;

5 -- the conversion factor for a resource-based relative value scale or
6 similar reimbursement methodology for health care services;

7 -- the amount of any discount on the price of a health care service;

8 -- the procedure code or other description of a health care service
9 covered by a payment;

10 -- the amount of a bonus related to the provision of health care
11 services or a withholding from the payment due for a health care
12 service; or

13 -- the amount of any other component of the reimbursement
14 methodology for a health care service.

15 The bill provides for the following requirements in regard to the
16 exercise of joint negotiation rights and related activity:

17 -- Health care providers shall select the members of their joint
18 negotiation group by mutual agreement;

19 -- Health care providers shall designate a joint negotiation
20 representative as the sole party authorized to negotiate with the carrier
21 on behalf of the health care providers as a group;

22 -- Health care providers may communicate with each other and their
23 joint negotiation representative with respect to the matters to be
24 negotiated with the carrier;

25 -- Health care providers may agree upon a proposal to be presented
26 by their joint negotiation representative to the carrier;

27 -- Health care providers may agree to be bound by the terms and
28 conditions negotiated by their joint negotiation representative;

29 -- The health care providers' joint negotiation representative may
30 provide the health care providers with the results of negotiations with
31 the carrier and an evaluation of any offer made by the carrier;

32 -- The health care providers' joint negotiation representative may
33 reject a contract proposal by a carrier on behalf of the health care
34 providers as long as the health care providers remain free to
35 individually contract with the carrier;

36 -- The health care providers' joint negotiation representative shall
37 advise the health care providers of the provisions of this bill and shall
38 inform the health care providers of the potential for legal action
39 against health care providers who violate federal antitrust law; and

40 -- Health care providers may not negotiate the inclusion or
41 alteration of terms and conditions to the extent the terms or conditions
42 are required or prohibited by federal or State statute or regulation;
43 however, this provision shall not be construed to limit the right of
44 health care providers to jointly petition federal or State government
45 for a change in the statute or regulation.

46 From a procedural standpoint, the bill provides that:

- 1 -- before engaging in any joint negotiation with a carrier, health
2 care providers shall obtain the Attorney General's approval to proceed
3 with the negotiations by submitting to the Attorney General a petition
4 seeking approval, which includes the information specified in the bill;
- 5 -- no provider contract terms negotiated under the bill shall be
6 effective until the terms are approved by the Attorney General, and the
7 petition seeking approval shall be jointly submitted to the Attorney
8 General by the health care providers and the carrier who are parties to
9 the contract;
- 10 -- the Attorney General shall approve or disapprove a petition filed
11 pursuant to the bill within 30 days after its filing; and, if disapproved,
12 the Attorney General shall furnish a written explanation of any
13 deficiencies along with a statement of specific remedial measures as to
14 how such deficiencies may be corrected; and
- 15 -- the Attorney General shall approve a petition to allow joint
16 negotiations if the pro-competitive and other benefits of the joint
17 negotiations outweigh any anti-competitive effects; and, in the case of
18 a petition seeking approval to jointly negotiate one or more fee or fee-
19 related terms, the carrier has substantial market power over the health
20 care providers as determined by the Attorney General in a manner
21 specified in the bill; and
- 22 -- the Attorney General shall approve a petition to implement
23 provider contract terms negotiated under the bill if the pro-competitive
24 and other benefits of the contract terms outweigh any anti-competitive
25 effects, and the contract terms are consistent with other applicable
26 statutes and regulations, as determined by the Attorney General
27 according to criteria set forth in the bill.
- 28 The bill requires that a carrier negotiate in good faith with health
29 care providers regarding the terms of provider contracts pursuant to
30 this bill.
- 31 Nothing contained in this bill shall be construed to:
- 32 -- prohibit or restrict activity by health care providers that is
33 sanctioned under federal or State law;
- 34 -- prohibit or require governmental approval of, or otherwise
35 restrict activity by, health care providers that is not prohibited under
36 federal antitrust law;
- 37 -- require approval of provider contract terms to the extent that the
38 terms are exempt from State regulation under section 514(a) of the
39 "Employee Retirement Income Security Act of 1974;" or
- 40 -- expand a health care provider's scope of practice or require a
41 carrier to contract with any type or specialty of health care provider.

ASSEMBLY, No. 464

STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblyman HERBERT CONAWAY, JR.

District 7 (Burlington and Camden)

Assemblyman JACK CONNERS

District 7 (Burlington and Camden)

Co-Sponsored by:

Assemblywoman Weinberg

SYNOPSIS

Permits joint negotiations by physicians with health benefits plans over terms and conditions of their contracts.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 9/22/2000)

1 AN ACT permitting joint negotiations by physicians with health
2 benefits plans over contractual terms and conditions and
3 supplementing Title 52 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. The Legislature finds and declares that:

9 a. Joint negotiation by competing physicians of certain terms and
10 conditions of contracts with health benefits plans will result in
11 procompetitive effects in the absence of any express or implied threat
12 of retaliatory joint action, such as a boycott or strike, by physicians;

13 b. Although joint negotiations over fee-related terms may, in some
14 circumstances, yield anticompetitive effects, there are instances in
15 which health benefits plans dominate the market to such an extent that
16 fair negotiations between physicians and a health benefits plan are
17 unobtainable absent any joint action on behalf of physicians; and, in
18 these instances, health benefits plans are able to virtually dictate the
19 terms of the contracts that they offer to physicians; and

20 c. It is, therefore, necessary and appropriate to authorize joint
21 negotiations by physicians on fee-related and other issues to address
22 this imbalance between physicians and health benefits plans.

23

24 2. As used in this act:

25 "Carrier" means an insurance company, health service corporation,
26 hospital service corporation, medical service corporation or health
27 maintenance organization authorized to issue health benefits plans in
28 this State.

29 "Covered person" means a person on whose behalf a carrier offering
30 the plan is obligated to pay benefits or provide services pursuant to the
31 health benefits plan.

32 "Covered service" means a health care service provided to a
33 covered person under a health benefits plan for which the carrier is
34 obligated to pay benefits or provide services.

35 "Health benefits plan" means a benefits plan which pays or provides
36 hospital and medical expense benefits for covered services, and is
37 delivered or issued for delivery in this State by or through a carrier.
38 For the purposes of this act, health benefits plan shall not include the
39 following plans, policies or contracts: Medicare supplement coverage
40 and risk contracts, accident only, specified disease or other limited
41 benefit, credit, disability, long-term care, CHAMPUS supplement
42 coverage, coverage arising out of a workers' compensation or similar
43 law, automobile medical payment insurance, personal injury protection
44 insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.),
45 dental or vision care coverage only, or hospital expense or
46 confinement indemnity coverage only.

1 "Physician" means a person licensed to practice medicine or
2 surgery, including podiatric medicine, by the State Board of Medical
3 Examiners pursuant to Title 45 of the Revised Statutes.

4 "Physicians' representative" means a third party, including a
5 physician who engages in joint negotiations pursuant to this act, which
6 is authorized by two or more physicians to negotiate on their behalf
7 with a health benefits plan over contractual terms and conditions
8 affecting those physicians.

9 "Utilization management" means a system for reviewing the
10 appropriate and efficient allocation of health care services under a
11 health benefits plan according to specified guidelines, in order to
12 recommend or determine whether, or to what extent, a health care
13 service given or proposed to be given to a covered person should or
14 will be reimbursed, covered, paid for, or otherwise provided under the
15 health benefits plan. The system may include: preadmission
16 certification, the application of practice guidelines, continued stay
17 review, discharge planning, preauthorization of ambulatory care
18 procedures and retrospective review.

19
20 3. Two or more competing physicians within the service area of a
21 health benefits plan may meet and communicate for the purpose of
22 jointly negotiating one or more of the following terms or conditions of
23 a contract with the health benefits plan:

24 a. practices and procedures to assess and improve the delivery of
25 effective, cost-efficient preventive health care services, including
26 childhood immunizations, prenatal care, and mammograms and other
27 cancer-screening tests or procedures;

28 b. practices and procedures to encourage early detection and
29 effective, cost-efficient management of diseases and illnesses in
30 children;

31 c. practices and procedures to assess and improve the delivery of
32 women's medical and health care, including care for menopause and
33 osteoporosis;

34 d. clinical criteria for effective, cost-efficient disease management
35 programs, including management programs for diabetes, asthma and
36 cardiovascular disease;

37 e. practices and procedures to encourage and promote patient
38 education and treatment compliance, including parental involvement
39 with a child's health care;

40 f. practices and procedures to identify, correct and prevent
41 potentially fraudulent activities;

42 g. practices and procedures for the effective, cost-efficient use of
43 outpatient surgery;

44 h. clinical practice guidelines and coverage criteria;

45 i. administrative procedures, including methods and timing of
46 payment to physicians for services;

- 1 j. procedures for resolving disputes between physicians and the
- 2 health benefits plan;
- 3 k. patient referral procedures;
- 4 l. the formulation and application of physician reimbursement
- 5 methodology;
- 6 m. quality assurance activities;
- 7 n. utilization management procedures;
- 8 o. physician selection and termination criteria used by the health
- 9 benefits plan; or
- 10 p. the inclusion or alteration of any term or condition of a contract
- 11 with the health benefits plan, except when the inclusion or alteration
- 12 is required by a federal or State regulation regarding the term or
- 13 condition in question; however, that restriction shall not limit physician
- 14 rights to jointly petition the federal or State government, as applicable,
- 15 for a change in the regulation.

16

17 4. Except as provided in section 5 of this act, two or more

18 competing physicians within the service area of a health benefits plan

19 shall not meet and communicate for the purpose of jointly negotiating

20 any of the following terms or conditions of a contract with the health

21 benefits plan:

- 22 a. the fee or price for a service provided by a physician, including
- 23 those determined by the application of any reimbursement
- 24 methodology;
- 25 b. the conversion factors in a resource-based relative value scale
- 26 or similar reimbursement methodology;
- 27 c. the amount of any discount on the price of a service to be
- 28 provided by a physician; or
- 29 d. the dollar amount of capitation or fixed payment for services
- 30 provided by a physician to a covered person.

31

32 5. a. Two or more competing physicians within the service area of

33 a health benefits plan may jointly negotiate any of the terms or

34 conditions of a contract with the health benefits plan that are specified

35 in section 4 of this act upon a finding by the Attorney General, in

36 consultation with the Commissioners of Banking and Insurance and

37 Health and Senior Services, that the health benefits plan has substantial

38 market power within its service area and that any of those terms or

39 conditions have already had, or threaten to have, an adverse effect on

40 the quality and availability of patient care among covered persons.

41 b. The Department of Banking and Insurance, in consultation with

42 the Department of Health and Senior Services, shall have the authority

43 to collect and investigate such information as is necessary to

44 determine, on an annual basis:

- 45 (1) the average number of covered lives per month per county by
- 46 every health benefits plan in the State; and

1 (2) the impact of the provisions of this section on average
2 physician fees in the State.

3 The Department of Banking and Insurance shall provide this
4 information to the Attorney General on an annual basis.

5 c. The provisions of this subsection shall not apply to a health
6 benefits plan which the Commissioner of Human Services certifies to
7 the Attorney General as providing covered services exclusively or
8 primarily to persons eligible for medical assistance pursuant to
9 P.L.1968, c.413 (C.30:4D-1 et seq.) or the Children's Health Care
10 Coverage Program established pursuant to P.L.1997, c.272 (C.30:4I-1
11 et seq.).

12

13 6. The exercise of joint negotiation rights by two or more
14 competing physicians within the service area of a health benefits plan
15 pursuant to sections 3 and 5 of this act shall conform to the following
16 criteria:

17 a. the physicians may communicate with each other with respect to
18 any contractual term or condition to be negotiated with the health
19 benefits plan;

20 b. the physicians may communicate with the physicians'
21 representative authorized to negotiate on their behalf with the health
22 benefits plan over any contractual term or condition;

23 c. the physicians' representative is the sole party authorized to
24 negotiate with the health benefits plan on behalf of the physicians as
25 a group;

26 d. at the option of each physician, the physicians may agree to be
27 bound by the terms and conditions negotiated by the physicians'
28 representative; and

29 e. a health benefits plan communicating or negotiating with a
30 physicians' representative may offer different contractual terms or
31 conditions to, or may contract with, individual competing physicians.

32

33 7. A person or entity proposing to act as a physicians'
34 representative shall comply with the following requirements:

35 a. Before entering into negotiations with a health benefits plan on
36 behalf of two or more competing physicians over any contractual term
37 or condition, the physicians' representative shall submit to the
38 Attorney General, for his approval in accordance with the provisions
39 of section 8 of this act, on a form and in a manner prescribed by the
40 Attorney General, a report which identifies:

41 (1) the representative's name and business address;

42 (2) the names and business addresses of the physicians who will be
43 represented by the identified representative;

44 (3) the ratio of the physicians requesting joint representation to the
45 total number of physicians practicing in the geographic service area of
46 the health benefits plan;

1 (4) the health benefits plan with which the representative intends
2 to negotiate on behalf of the identified physicians;

3 (5) the proposed subject matter of the negotiations with the
4 identified health benefits plan;

5 (6) the representative's plan of operation and procedures to ensure
6 compliance with the provisions of this act;

7 (7) the expected impact of the proposed joint negotiations on the
8 quality and availability of patient care among covered persons; and

9 (8) the expected benefits of a contract between the identified
10 physicians and health benefits plan.

11 The report shall be accompanied by a fee to be paid by the
12 physicians' representative to the Attorney General in an amount, as
13 determined by the Attorney General, which shall be reasonable and
14 necessary to cover the costs associated with carrying out the
15 provisions of this act.

16 b. After the physicians' representative and health benefits plan
17 identified pursuant to subsection a. of this section have reached an
18 agreement on the contractual terms or conditions that were the subject
19 matter of their negotiations, the physicians' representative shall submit
20 to the Attorney General, for his approval in accordance with the
21 provisions of section 8 of this act, a copy of the proposed contract
22 between the physicians identified pursuant to subsection a. of this
23 section and the health benefits plan, as well as any plan of action which
24 may be formally agreed to by the physicians' representative and health
25 benefits plan to implement the terms and conditions of the contract.

26 c. No later than the 14th day after a health benefits plan notifies a
27 physicians' representative of its decision to decline or terminate
28 negotiations entered into in accordance with the provisions of this act,
29 or after the date that a physicians' representative requests that a health
30 benefits plan enter into such negotiations to which request the plan
31 fails to respond, the physicians' representative shall report to the
32 Attorney General that the negotiations have ended, on a form and in
33 a manner prescribed by the Attorney General. The physicians'
34 representative may resume negotiations with the health benefits plan
35 no later than the 60th day after reporting to the Attorney General that
36 the negotiations have ended, on the basis of the report submitted to
37 the Attorney General pursuant to subsection a. of this section and
38 approved by the Attorney General in accordance with the provisions
39 of section 8 of this act. After that date, the physicians' representative
40 shall be required to submit a new report and pay an additional fee to
41 the Attorney General in accordance with the provisions of subsection
42 a. of this section, in order to engage in negotiations with the health
43 benefits plan pursuant to this act.

44
45 8. a. The Attorney General shall provide written approval or
46 disapproval of a report or proposed contract furnished by a physicians'

1 representative pursuant to section 7 of this act no later than the 30th
2 day after receipt thereof. If the Attorney General fails to provide
3 written approval or disapproval within this time period, the physicians'
4 representative may petition a court of competent jurisdiction for an
5 order requiring the Attorney General to take such action. If the
6 Attorney General disapproves the report or proposed contract, he shall
7 furnish a written explanation of any deficiencies therein to the
8 physicians' representative along with a statement of specific remedial
9 measures by which the deficiencies may be corrected. A physicians'
10 representative shall not enter into negotiations with a health benefits
11 plan over any contractual term or condition unless the report furnished
12 by the physicians' representative has been approved in writing by the
13 Attorney General, nor shall a proposed contract between two or more
14 competing physicians and a health benefits plan be implemented unless
15 the contract has been approved by the Attorney General.

16 b. The Attorney General shall approve a report or proposed
17 contract furnished by a physicians' representative pursuant to section
18 7 of this act if the Attorney General determines that the report or
19 proposed contract has demonstrated that the likely benefits resulting
20 from the proposed joint negotiations over any contractual term or
21 condition or the proposed contract, as applicable, outweigh the
22 disadvantages attributable to a reduction in competition that may
23 result therefrom. In making this determination, the Attorney General
24 shall consider physician distribution by specialty and its effect on
25 competition in the geographic service area of the health benefits plan.
26 The Attorney General shall not approve a report furnished by a
27 physicians' representative pursuant to section 7 of this act if the
28 physicians' representative proposes to enter into negotiations with a
29 health benefits plan on behalf of more than 10% of the total number of
30 physicians practicing in the geographic service area of the health
31 benefits plan, unless the Attorney General determines, consistent with
32 the provisions of this act, that conditions relating to the quality and
33 availability of patient care among covered persons in the geographic
34 service area of the health benefits plan support the inclusion of a
35 higher percentage of practicing physicians in those joint negotiations.

36 c. Written approval by the Attorney General of a report furnished
37 by a physicians' representative pursuant to section 7 of this act shall be
38 effective for all subsequent negotiations between the physicians'
39 representative and the identified health benefits plan, subject to the
40 provisions of subsection c. of section 7 of this act.

41

42 9. a. The provisions of this act shall not be construed to permit
43 two or more physicians to:

44 (1) jointly engage in a coordinated cessation, reduction or
45 limitation of health care services;

46 (2) meet or communicate for the purpose of jointly negotiating a

1 requirement that at least one of the physicians, as a condition of
2 participation in a health benefits plan, be allowed to participate in all
3 of the products offered by the health benefits plan; or

4 (3) jointly negotiate with a health benefits plan to exclude, limit or
5 otherwise restrict any non-physician health care provider from
6 participation in a health benefits plan based substantially on the fact
7 that the health care provider is not a physician, unless that exclusion,
8 limitation or restriction is otherwise permitted by law.

9 b. Prior to entering into negotiations with a health benefits plan on
10 behalf of two or more competing physicians over any contractual term
11 or condition, a physicians' representative shall notify those physicians
12 in writing of the provisions of this section and advise them as to their
13 potential legal liability if they engage in any joint action that is not
14 authorized under the provisions of this act.

15
16 10. The Attorney General, in consultation with the Commissioners
17 of Banking and Insurance and Health and Senior Services and pursuant
18 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
19 et seq.), shall adopt rules and regulations to effectuate the purposes of
20 this act.

21
22 11. This act shall take effect on the 90th day after enactment,
23 except that the Attorney General, in consultation with the
24 Commissioners of Banking and Insurance and Health and Senior
25 Services, may take such anticipatory administrative action in advance
26 as shall be necessary for the implementation of the act.

27
28
29 STATEMENT

30
31 This bill would give physicians the right to engage in joint
32 negotiations over the terms and conditions of their contracts with
33 health benefits plans. The bill is generally modeled after Texas Senate
34 Bill No. 1468 which was enacted on June 20, 1999 and thereby
35 became the first law of its kind in the nation.

36 For the purposes of this bill, "physician" is defined as a person
37 licensed to practice medicine or surgery, including podiatric medicine,
38 by the State Board of Medical Examiners pursuant to Title 45 of the
39 Revised Statutes.

40 This bill would permit physicians in the geographic service area of
41 a health benefits plan to jointly negotiate with the plan, through a
42 physicians' representative who is approved by the Attorney General to
43 act on their behalf, over the terms and conditions of a proposed
44 contract, which, if agreed to by the parties to the negotiation, must
45 then be approved by the Attorney General before being implemented.

- 1 These terms and conditions would include:
- 2 C practices and procedures to assess and improve the delivery of
 - 3 effective, cost-efficient preventive health care services;
 - 4 C practices and procedures to encourage early detection and effective,
 - 5 cost-efficient management of diseases and illnesses in children;
 - 6 C practices and procedures to assess and improve the delivery of
 - 7 women's medical and health care;
 - 8 C clinical criteria for effective, cost-efficient disease management
 - 9 programs;
 - 10 C practices and procedures to encourage and promote patient
 - 11 education and treatment compliance;
 - 12 C practices and procedures to identify, correct and prevent potentially
 - 13 fraudulent activities;
 - 14 C practices and procedures for the effective, cost-efficient use of
 - 15 outpatient surgery;
 - 16 C clinical practice guidelines and coverage criteria;
 - 17 C administrative procedures, including methods and timing of
 - 18 payment to physicians for services;
 - 19 C procedures for resolving disputes between physicians and the plan;
 - 20 C patient referral procedures;
 - 21 C the formulation and application of physician reimbursement
 - 22 methodology;
 - 23 C quality assurance activities;
 - 24 C utilization management procedures;
 - 25 C physician selection and termination criteria used by the plan; and
 - 26 C the inclusion or alteration of any term or condition of a contract
 - 27 with the plan, except when the inclusion or alteration is required by
 - 28 a federal or State regulation regarding the term or condition in
 - 29 question.
- 30 In addition, the bill provides that the following terms and conditions
- 31 of a proposed contract may be subject to such joint negotiations if the
- 32 Attorney General, in consultation with the Commissioners of Banking
- 33 and Insurance and Health and Senior Services, finds that the health
- 34 benefits plan has substantial market power within its service area and
- 35 that any of those terms or conditions have already had, or threaten to
- 36 have, an adverse effect on the quality and availability of patient care
- 37 among covered persons:
- 38 C the fee or price for a service provided by a physician, including
 - 39 those determined by the application of any reimbursement
 - 40 methodology;
 - 41 C the conversion factors in a resource-based relative value scale or
 - 42 similar reimbursement methodology;
 - 43 C the amount of any discount on the price of a service to be provided
 - 44 by a physician; and
 - 45 C the dollar amount of capitation or fixed payment for services
 - 46 provided by a physician to a covered person.

1 The bill stipulates that a physicians' representative shall not enter
2 into negotiations with a health benefits plan on behalf of more than
3 10% of the total number of physicians practicing in the geographic
4 service area of the health benefits plan, unless the Attorney General
5 determines, consistent with the provisions of this bill, that conditions
6 relating to the quality and availability of patient care among covered
7 persons in the geographic service area of the health benefits plan
8 support the inclusion of a higher percentage of practicing physicians
9 in those joint negotiations.

10 Also, the bill explicitly prohibits physicians from:

- 11 C jointly engaging in a coordinated cessation, reduction or limitation
12 of health care services;
- 13 C meeting or communicating for the purpose of jointly negotiating a
14 requirement that at least one of the physicians, as a condition of
15 participation in a health benefits plan, be allowed to participate in
16 all of the products offered by the health benefits plan; or
- 17 C jointly negotiating with a health benefits plan to exclude, limit or
18 otherwise restrict any non-physician health care provider from
19 participation in a health benefits plan based substantially on the fact
20 that the health care provider is not a physician, unless that
21 exclusion, limitation or restriction is otherwise permitted by law.

22 This bill should be viewed in the context of a growing trend
23 nationwide among physicians to seek to organize as a way to achieve
24 a level playing field with powerful managed care organizations. On
25 June 23, 1999, the House of Delegates of the 152-year old American
26 Medical Association, the nation's largest physician organization, voted
27 at its annual meeting to support an effort to organize physicians who
28 are salaried employees and medical residents, and to support pending
29 federal legislation to grant an exemption from federal anti-trust law
30 that would allow self-employed physicians to bargain collectively.

31 This bill is premised on a conviction that the only effective way for
32 physicians to prevent managed care plans from unfairly restricting the
33 ability of these health care professionals to care for their patients
34 without undue interference is to gain the leverage that comes from
35 joint negotiations.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2169, 2241 and 464

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED JUNE 4, 2001

Sponsored by:

Assemblyman LARRY CHATZIDAKIS

District 8 (Atlantic, Burlington and Camden)

Assemblyman NICHOLAS ASSELTA

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman JOSEPH V. DORIA, JR.

District 31 (Hudson)

Assemblyman HERBERT CONAWAY, JR.

District 7 (Burlington and Camden)

Assemblyman JACK CONNERS

District 7 (Burlington and Camden)

Co-Sponsored by:

Assemblymen LeFevre, Gusciora, Assemblywoman Weinberg,

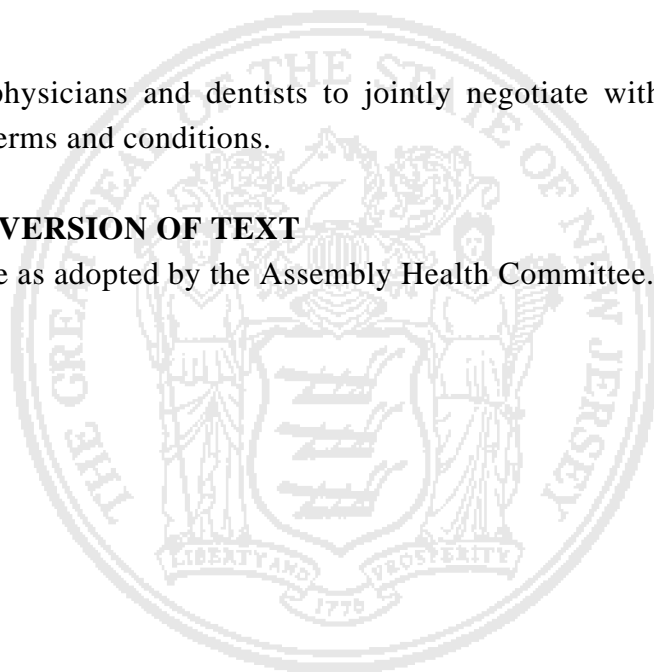
Assemblymen Geist, Cohen, Munoz and Assemblywoman Gill

SYNOPSIS

Allows physicians and dentists to jointly negotiate with carriers over contractual terms and conditions.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Health Committee.



(Sponsorship Updated As Of: 11/30/2001)

1 AN ACT providing for joint negotiations by physicians and dentists
2 with carriers and supplementing Title 52 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. The Legislature finds and declares that:

8 a. Active, robust and fully competitive markets for health care and
9 dental services provide the best opportunity for the residents of this
10 State to receive high-quality health care and dental services at an
11 appropriate cost;

12 b. A substantial amount of health care and dental services in this
13 State is purchased for the benefit of patients by health and dental
14 insurance carriers engaged in the financing of health care and dental
15 services or is otherwise delivered subject to the terms of agreements
16 between carriers and physicians and dentists;

17 c. Carriers are able to control the flow of patients to physicians
18 and dentists through compelling financial incentives for patients in
19 their health and dental benefits plans to utilize only the services of
20 physicians and dentists with whom the carriers have contracted;

21 d. Carriers also control the health care and dental services
22 rendered to patients through utilization management and other
23 managed care tools and associated coverage and payment policies;

24 e. Carriers are often able to virtually dictate the terms of the
25 contracts that they offer physicians and dentists and commonly offer
26 these contracts on a take-it-or-leave-it basis;

27 f. The power of carriers to unilaterally impose provider contract
28 terms jeopardizes the ability of physicians and dentists to deliver the
29 superior quality health care and dental services traditionally available
30 in this State;

31 g. Physicians and dentists do not have sufficient market power to
32 reject unfair provider contract terms offered by carriers that impede
33 their ability to deliver medically appropriate care without undue delay
34 or difficulties;

35 h. Inadequate reimbursement and other unfair payment terms
36 offered by carriers adversely affect the quality of patient care and
37 access to care by reducing the resources that physicians and dentists
38 can devote to patient care and decreasing the time that physicians and
39 dentists are able to spend with their patients;

40 i. Inequitable reimbursement and other unfair payment terms also
41 endanger the health care infrastructure and medical progress by
42 diverting capital needed for reinvestment in the health care delivery
43 system, curtailing the purchase of state-of-the-art technology, the
44 pursuit of medical research, and expansion of medical services, all to
45 the detriment of the residents of this State;

46 j. The inevitable collateral reduction and migration of the health

1 care work force will also have negative consequences for the economy
2 of this State;

3 k. Empowering independent physicians and dentists to jointly
4 negotiate with carriers as provided in this act will help restore the
5 competitive balance and improve competition in the markets for health
6 care and dental services in this State, thereby providing benefits for
7 consumers, physicians and dentists and less dominant carriers;

8 l. This act is necessary and proper, and constitutes an appropriate
9 exercise of the authority of this State to regulate the business of
10 insurance and the delivery of health care and dental services;

11 m. The pro-competitive and other benefits of the joint negotiations
12 and related joint activity authorized by this act, including, but not
13 limited to, restoring the competitive balance in the market for health
14 care services, protecting access to quality patient care, promoting the
15 health care infrastructure and medical progress, and improving
16 communications, outweigh any potential anti-competitive effects of
17 this act; and

18 n. It is the intention of the Legislature to authorize independent
19 physicians and dentists to jointly negotiate with carriers and to qualify
20 such joint negotiations and related joint activities for the State-action
21 exemption to the federal antitrust laws through the articulated State
22 policy and active supervision provided under this act.

23

24 2. As used in this act:

25 "Carrier" means an insurance company, health service corporation,
26 hospital service corporation, medical service corporation or health
27 maintenance organization which is authorized to issue health benefits
28 plans in this State and a dental service corporation or dental plan
29 organization authorized to issue dental plans in this State.

30 "Covered person" means a person on whose behalf a carrier which
31 offers a health benefits or dental plan is obligated to pay benefits or
32 provide services pursuant to the plan.

33 "Covered service" means a health care or dental service provided
34 to a covered person under a health benefits or dental plan for which
35 the carrier is obligated to pay benefits or provide services.

36 "Dental plan" means a benefits plan which pays or provides dental
37 expense benefits for covered services and is delivered or issued for
38 delivery in this State by or through a dental carrier.

39 "Dentist" means a person who is licensed to practice dentistry by
40 the New Jersey State Board of Dentistry in accordance with the
41 provisions of Title 45 of the Revised Statutes.

42 "Health benefits plan" means a plan which pays or provides
43 hospital and medical expense benefits for covered services, and is
44 delivered or issued for delivery in this State by or through a carrier.
45 For the purposes of this act, health benefits plan shall not include the
46 following plans, policies or contracts: Medicare supplement coverage

1 and risk contracts, accident only, specified disease or other limited
2 benefit, credit, disability, long-term care, CHAMPUS supplement
3 coverage, coverage arising out of a workers' compensation or similar
4 law, automobile medical payment insurance, personal injury protection
5 insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.),
6 dental or vision care coverage only, or hospital expense or
7 confinement indemnity coverage only.

8 "Joint negotiation representative" means a representative selected
9 by two or more independent physicians or dentists to engage in joint
10 negotiations with a carrier on their behalf.

11 "Physician" means a person who is licensed to practice medicine
12 and surgery by the State Board of Medical Examiners in accordance
13 with the provisions of Title 45 of the Revised Statutes.

14 "Utilization management" means a system for reviewing the
15 appropriate and efficient allocation of health care or dental services
16 under a health benefits or dental plan in accordance with specific
17 guidelines, for the purpose of determining whether, or to what extent,
18 a health care or dental service that has been provided or is proposed
19 to be provided to a covered person is to be covered under the health
20 benefits or dental plan.

21

22 3. Two or more independent physicians or dentists who are
23 practicing in the service area of a carrier may jointly negotiate with a
24 carrier and engage in related joint activity, as provided in this act,
25 regarding non-fee-related matters which may affect patient care,
26 including, but not limited to, any of the following:

27 a. the definition of medical necessity and other conditions of
28 coverage;

29 b. utilization management criteria and procedures;

30 c. clinical practice guidelines;

31 d. preventive care and other medical management policies;

32 e. patient referral standards and procedures, including, but not
33 limited to, those applicable to out-of-network referrals;

34 f. drug formularies and standards and procedures for prescribing
35 off-formulary drugs;

36 g. quality assurance programs;

37 h. respective physician or dentist and carrier liability for the
38 treatment or lack of treatment of covered persons;

39 i. the methods and timing of payments;

40 j. other administrative procedures, including, but not limited to,
41 eligibility verification systems and claim documentation requirements
42 for covered persons;

43 k. credentialing standards and procedures for the selection,
44 retention and termination of participating physicians or dentists;

45 l. mechanisms for resolving disputes between the carrier and
46 physicians or dentists, including, but not limited to, the appeals

- 1 process for utilization management and credentialing determinations;
2 m. the health benefits or dental plans sold or administered by the
3 carrier in which the physicians or dentists are required to participate;
4 n. the formulation and application of reimbursement methodology;
5 o. the terms and conditions of physician or dentist contracts,
6 including, but not limited to, all products clauses, and the duration and
7 renewal provisions of the contract; and
8 p. the inclusion or alteration of a contractual term or condition,
9 except when the inclusion or alteration is required by a federal or State
10 regulation concerning that term or condition; however, the restriction
11 shall not limit a physician's or dentist's rights to jointly petition the
12 federal or State government, as applicable, to change the regulation.
13
- 14 4. a. Upon a finding by the Attorney General, in consultation with
15 the Commissioners of Banking and Insurance and Health and Senior
16 Services, that the carrier has substantial market power in its service
17 area and that any of the terms or conditions of the contract with the
18 carrier pose an actual or potential threat to the quality and availability
19 of patient care among covered persons, two or more independent
20 physicians or dentists who are practicing in the service area of a carrier
21 may jointly negotiate with the carrier and engage in related joint
22 activity, as provided in this act regarding fees and fee-related matters,
23 including, but not limited to, any of the following:
24 (1) the amount of payment or the methodology for determining the
25 payment for a health care or dental service, including, but not limited
26 to, cost of living increases;
27 (2) the conversion factor for a resource-based relative value scale
28 or similar reimbursement methodology for health care or dental
29 services;
30 (3) the amount of any discount on the price of a health care or
31 dental service;
32 (4) the procedure code or other description of a health care or
33 dental service covered by a payment and the appropriate grouping of
34 the procedure codes;
35 (5) the amount of a bonus related to the provision of health care
36 or dental services or a withholding from the payment due for a health
37 care or dental service; and
38 (6) the amount of any other component of the reimbursement
39 methodology for a health care or dental service.
40 b. The Department of Banking and Insurance, in consultation with
41 the Department of Health and Senior Services, shall have the authority
42 to collect and investigate such information as it reasonably believes is
43 necessary to determine, on an annual basis:
44 (1) the average number of covered lives and geographical
45 distribution of covered lives per quarter per county for every carrier
46 in the State; and

1 (2) the impact of the provisions of this section on average
2 physician or dentist fees in the State.

3 The Department of Banking and Insurance shall provide this
4 information to the Attorney General on an annual basis.

5
6 5. The exercise of joint negotiation rights by two or more
7 independent physicians or dentists who are practicing in the service
8 area of a carrier pursuant to this act shall conform to the following
9 criteria:

10 a. the physicians or dentists may communicate with each other
11 concerning any contractual term or condition to be negotiated with the
12 carrier;

13 b. the physicians or dentists may communicate with the joint
14 negotiation representative authorized to negotiate on their behalf with
15 the carrier concerning any contractual term or condition;

16 c. the joint negotiation representative shall be the sole party
17 authorized to negotiate with the carrier on behalf of the physicians or
18 dentists as a group;

19 d. the physicians or dentists may, at the option of each physician
20 or dentist, agree to be bound by the terms and conditions negotiated
21 by the joint negotiation representative; and

22 e. when communicating or negotiating with a joint negotiation
23 representative, a carrier may offer different contractual terms or
24 conditions to, or may contract with, individual independent physicians
25 or dentists.

26
27 6. The provisions of this act shall not apply to a health benefits or
28 dental plan which is certified by the Commissioner of Human Services
29 to the Attorney General as providing covered services exclusively or
30 primarily to persons who are eligible for medical assistance under
31 P.L.1968, c.413 (C.30:4D-1 et seq.), the Children's Health Care
32 Coverage Program under P.L.1997, c.272 (C.30:4I-1 et seq.) or the
33 FamilyCare Health Coverage Program under P.L.2000, c.71 (C.30:4J-
34 1 et seq.).

35
36 7. A person or entity which proposes to act as a joint negotiation
37 representative shall satisfy the following requirements:

38 a. Before entering into negotiations with a carrier on behalf of two
39 or more independent physicians or dentists, the joint negotiation
40 representative shall submit to the Attorney General, for his approval
41 pursuant to section 8 of this act, on a form and in a manner prescribed
42 by the Attorney General, a petition which identifies:

43 (1) the representative's name and business address;

44 (2) the names and business addresses of each physician or dentist
45 who will be represented by the identified representative;

46 (3) the ratio of the physicians or dentists requesting joint

1 representation to the total number of physicians or dentists who are
2 practicing within the geographic service area of the carrier;

3 (4) the carrier with which the representative proposes to enter into
4 negotiations on behalf of the identified physicians or dentists;

5 (5) the intended subject matter of the proposed negotiations with
6 the identified carrier;

7 (6) the representative's plan of operation and procedures to ensure
8 compliance with the provisions of this act;

9 (7) the anticipated effect of the proposed joint negotiations on the
10 quality and availability of health or dental care among covered
11 persons;

12 (8) the anticipated benefits of a contract between the identified
13 physicians or dentists and carrier;

14 (9) such other data, information and documents as the petitioners
15 desire to submit in support of their petition; and

16 (10) such other data, information and documents as the Attorney
17 General deems necessary.

18 The joint negotiation representative, upon submitting the petition,
19 shall pay a fee to the Attorney General in an amount, as determined by
20 the Attorney General, which shall be reasonable and necessary to
21 cover the costs associated with carrying out the provisions of this act.

22 b. After the joint negotiation representative and the carrier
23 identified pursuant to subsection a. of this section have reached an
24 agreement on the contractual terms or conditions that were the subject
25 matter of their negotiations, the joint negotiation representative shall
26 submit to the Attorney General, for his approval in accordance with
27 the provisions of section 8 of this act, a copy of the proposed contract
28 between the physicians or dentists identified pursuant to subsection a.
29 of this section and the carrier, as well as any plan of action which the
30 joint negotiation representative and the carrier may formally agree to
31 for the purpose of implementing the terms and conditions of the
32 contract.

33 c. Within 14 days after either party notifies the other party of its
34 decision to decline or terminate negotiations entered into pursuant to
35 this act, or after the date that a joint negotiation representative
36 requests that a carrier enter into such negotiations to which request
37 the plan fails to respond, the joint negotiation representative shall
38 report to the Attorney General that the negotiations have ended, on a
39 form and in a manner to be prescribed by the Attorney General. The
40 joint negotiation representative may resume negotiations with the
41 carrier no later than 60 days after reporting to the Attorney General
42 that the negotiations have ended, on the basis of the petition submitted
43 to the Attorney General pursuant to subsection a. of this section and
44 approved by the Attorney General in accordance with the provisions
45 of section 8 of this act. After that date, the joint negotiation
46 representative shall be required to submit a new petition and pay an

1 additional fee to the Attorney General pursuant to subsection a. of this
2 section, in order to engage in negotiations with the carrier under this
3 act.

4
5 8. a. The Attorney General shall provide written approval or
6 disapproval of a petition or a proposed contract furnished by a joint
7 negotiation representative pursuant to section 7 of this act no later
8 than 30 days after receipt of the petition or proposed contract, as
9 applicable. If the Attorney General fails to provide written approval
10 or disapproval within this time period, the joint negotiation
11 representative may petition a court of competent jurisdiction for an
12 order to require the Attorney General to take such action. If the
13 Attorney General disapproves the petition or the proposed contract,
14 he shall forward a written explanation of any deficiencies therein to the
15 joint negotiation representative along with a statement of the specific
16 remedial measures by which those deficiencies may be corrected.

17 A joint negotiation representative shall not engage in negotiations
18 with a carrier over any contractual term or condition unless the
19 petition furnished by the joint negotiation representative has been
20 approved in writing by the Attorney General, nor shall a proposed
21 contract between two or more independent physicians or dentists and
22 a carrier be implemented unless the Attorney General has approved the
23 contract.

24 b. The Attorney General shall approve a petition or a proposed
25 contract furnished by a joint negotiation representative pursuant to
26 section 7 of this act if the Attorney General determines that the
27 petition or proposed contract demonstrates that the benefits which are
28 likely to result from the proposed joint negotiations over a contractual
29 term or condition or the proposed contract, as applicable, outweigh
30 the disadvantages attributable to a reduction in competition that may
31 result from the proposed joint negotiations. In making his
32 determination, the Attorney General shall consider physician or dentist
33 distribution by specialty and its effect on competition in the geographic
34 service area of the carrier.

35 c. The Attorney General's written approval of a petition which is
36 furnished by a joint negotiation representative under section 7 of this
37 act shall be effective for all subsequent negotiations between the joint
38 negotiation representative and the identified carrier, subject to the
39 provisions of subsection c. of section 7 of this act.

40 d. In the case of a petition submitted pursuant to subsection a. of
41 section 7 of this act, the Attorney General shall notify the carrier of
42 the petition and provide the carrier with the opportunity to submit
43 written comments within a specified time frame that does not extend
44 beyond the date by which the Attorney General is required to act on
45 the petition.

1 9. a. Within 30 days from the mailing by the Attorney General of
2 a notice of disapproval of a petition submitted under section 7 of this
3 act, the petitioners may make a written application to the Attorney
4 General for a hearing.

5 b. Upon receipt of a timely written application for a hearing, the
6 Attorney General shall schedule and conduct a hearing in accordance
7 with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
8 1 et seq.). The hearing shall be held within 30 days of the application
9 unless the petitioner seeks an extension.

10 c. The sole parties with respect to any petition under section 7 of
11 this act shall be the petitioners, and notwithstanding any other
12 provision of law to the contrary, the Attorney General shall not be
13 required to treat any other person as a party and no other person shall
14 be entitled to appeal the Attorney General's determination.

15
16 10. All information, including documents and copies thereof,
17 obtained by or disclosed to the Attorney General or any other person
18 in a petition under section 7 of this act, shall be treated confidentially
19 and shall be deemed proprietary and shall not be made public or
20 otherwise disclosed by the Attorney General or any other person
21 without the written consent of the petitioners to whom the information
22 pertains.

23
24 11. A carrier and a joint negotiation representative shall negotiate
25 in good faith regarding the terms and conditions of physician or dentist
26 contracts pursuant to this act.

27
28 12. a. The provisions of this act shall not be construed to:

29 (1) permit two or more physicians or dentists to jointly engage in
30 a coordinated cessation, reduction or limitation of the health care or
31 dental services which they provide;

32 (2) permit two or more physicians or dentists to meet or
33 communicate in order to jointly negotiate a requirement that at least
34 one of the physicians or dentists, as a condition of participation with
35 a carrier, be allowed to participate in all of the products offered by the
36 carrier;

37 (3) permit two or more physicians or dentists to jointly negotiate
38 with a carrier to exclude, limit or otherwise restrict a non-physician or
39 non-dentist health care provider from participating in the carrier's
40 health benefits or dental plan based substantially on the fact that the
41 health care provider is not a physician or dentist, unless that exclusion,
42 limitation or restriction is otherwise permitted by law;

43 (4) prohibit or restrict activity by physicians or dentists that is
44 sanctioned under federal or State law or subject such activity to the
45 requirements of this act;

46 (5) affect governmental approval of, or otherwise restrict activity
47 by, physicians or dentists that is not prohibited under federal antitrust

1 law; or

2 (6) require approval of physician or dentist contract terms to the
3 extent that the terms are exempt from State regulation under section
4 514(a) of the "Employee Retirement Income Security Act of 1974,"
5 Pub.L.93-406 (29 U.S.C. s.1144(a)).

6 b. Prior to entering into negotiations with a carrier on behalf of
7 two or more independent physicians or dentists over a contractual
8 term or condition, a joint negotiation representative shall notify the
9 physicians or dentists in writing of the provisions of this act and advise
10 them as to their potential for legal action against physicians or dentists
11 who violate federal antitrust law.

12

13 13. The Attorney General, in consultation with the Commissioners
14 of Banking and Insurance and Health and Senior Services, shall report
15 to the Governor and the Legislature no later than four years after the
16 effective date of this act on its implementation.

17 The report shall include the number of petitions submitted for
18 approval to engage in joint negotiations and the outcome of the
19 petitions and the negotiations, an assessment of the effect the joint
20 negotiations provided for in this act has had in restoring the
21 competitive balance in the market for health care or dental services
22 and in protecting access to quality patient care, an assessment of the
23 impact this act has had on health insurance premiums in the State, and
24 such other information that the Attorney General deems appropriate.
25 The report shall also include the Attorney General's recommendations
26 as to whether the provisions of this act shall be expanded to include
27 other types of health care professionals and facilities.

28 The Attorney General, in consultation with the Commissioners of
29 Banking and Insurance and Health and Senior Services, shall report to
30 the Governor and the Legislature no later than five years after the
31 effective date of this act with his recommendation as to whether this
32 act shall be made permanent.

33

34 14. The Attorney General, in consultation with the Commissioners
35 of Banking and Insurance and Health and Senior Services and pursuant
36 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
37 et seq.), shall adopt rules and regulations to effectuate the purposes of
38 this act.

39

40 15. This act shall take effect 90 days after enactment and shall
41 expire six years after the effective date, but the expiration of this act
42 shall not impair any contract negotiated pursuant to this act that is in
43 effect on the date of expiration. The Attorney General, in consultation
44 with the Commissioners of Banking and Insurance and Health and
45 Senior Services, may take such anticipatory administrative action in
46 advance of the effective date as shall be necessary to implement the
47 act.

ASSEMBLY HEALTH COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 2169, 2241 and 464

STATE OF NEW JERSEY

DATED: JUNE 4, 2001

The Assembly Health Committee reports without recommendation an Assembly Committee Substitute for Assembly Bill Nos. 2169, 2241 and 464.

This committee substitute is intended to provide physicians and dentists with the right to engage in joint negotiations over the terms and conditions of their contracts with health and dental insurance carriers, that is, health, hospital and medical service corporations, commercial health insurers, health maintenance organizations, dental service corporations and dental plan organizations.

The substitute permits two or more independent physicians (including podiatrists) or dentists who are practicing in the geographic service area of a carrier to jointly negotiate with the carrier and engage in related joint activity over the terms and conditions of a proposed contract. The negotiations would be carried out through a joint negotiation representative selected by the physicians or dentists to act on their behalf.

The terms and conditions that may be the subject of the negotiations include non-fee-related matters which may affect patient care, such as any of the following:

- C the definition of medical necessity and other conditions of coverage;
- C utilization management criteria and procedures;
- C clinical practice guidelines;
- C preventive care and other medical management policies;
- C patient referral standards and procedures, including, but not limited to, those applicable to out-of-network referrals;
- C drug formularies and standards and procedures for prescribing off-formulary drugs;
- C quality assurance programs;
- C respective physician or dentist and carrier liability for the treatment or lack of treatment of covered persons;
- C the methods and timing of payments;
- C other administrative procedures, including, but not limited to, eligibility verification systems and claim documentation requirements for covered persons;

- C credentialing standards and procedures for the selection, retention and termination of participating physicians or dentists;
- C mechanisms for resolving disputes between the carrier and physicians or dentists, including, but not limited to, the appeals process for utilization management and credentialing determinations;
- C the health benefits or dental plans sold or administered by the carrier in which the physicians or dentists are required to participate;
- C the formulation and application of reimbursement methodology;
- C the terms and conditions of physician or dentist contracts, including, but not limited to, all products clauses, and the duration and renewal provisions of the contract; and
- C the inclusion or alteration of a contractual term or condition, except when the inclusion or alteration is required by a federal or State regulation concerning that term or condition; however, the restriction shall not limit a physician's or dentist's rights to jointly petition the federal or State government, as applicable, to change the regulation.

In addition, the substitute provides that the following terms and conditions of a proposed contract concerning fees and fee-related matters may be subject to joint negotiations if the Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, finds that the carrier has substantial market power in its service area and that any of the terms or conditions of the contract with the carrier pose an actual or potential threat to the quality and availability of patient care among covered persons. These matters include, but are not limited to, any of the following:

- C the amount of payment or the methodology for determining the payment for a health care or dental service, including, but not limited to, cost of living increases;
- C the conversion factor for a resource-based relative value scale or similar reimbursement methodology for health care or dental services;
- C the amount of any discount on the price of a health care or dental service;
- C the procedure code or other description of a health care or dental service covered by a payment and the appropriate grouping of the procedure codes;
- C the amount of a bonus related to the provision of health care or dental services or a withholding from the payment due for a health care or dental service; and
- C the amount of any other component of the reimbursement methodology for a health care or dental service.

The substitute requires that a person or entity which proposes to act as a joint negotiation representative shall submit a petition to the

Attorney General, for his approval. The petition shall identify the representative, the physicians or dentists who the representative will represent, the intended subject matter of the proposed negotiations and other information specified in the substitute. Upon submitting the petition, the representative shall pay a fee to the Attorney General, in an amount determined by the Attorney General, which shall be reasonable and necessary to cover the costs associated with carrying out the provisions of this substitute.

After the joint negotiation representative and the carrier have reached an agreement on the contractual terms or conditions that were the subject matter of their negotiations, the representative shall submit a copy of the proposed contract between the physicians or dentists and the carrier to the Attorney General, for his approval. The Attorney General shall provide written approval or disapproval of a petition or a proposed contract furnished by the representative no later than 30 days after receipt of the petition or proposed contract.

The substitute provides that a joint negotiation representative shall not engage in negotiations with a carrier unless the representative's petition has been approved in writing by the Attorney General, and a proposed contract between physicians or dentists and a carrier negotiated under this substitute shall not be implemented unless the Attorney General has approved the contract. The substitute further provides that either party may decline to negotiate or terminate negotiations. In either event, the representative shall so notify the Attorney General.

The Attorney General shall approve a petition or a proposed contract if he determines that the petition or proposed contract demonstrates that the benefits which are likely to result from the proposed joint negotiations or contract, as applicable, outweigh the disadvantages attributable to a reduction in competition that may result from the proposed joint negotiations. In making his determination, the Attorney General shall consider physician or dentist distribution by specialty and its effect on competition in the geographic service area of the carrier.

The substitute provides that its provisions shall not be construed to:

- (1) permit two or more physicians or dentists to jointly engage in a coordinated cessation, reduction or limitation of the health care or dental services which they provide;

- (2) permit two or more physicians or dentists to meet or communicate in order to jointly negotiate a requirement that at least one of the physicians or dentists, as a condition of participation with a carrier, be allowed to participate in all of the products offered by the carrier;

- (3) permit two or more physicians or dentists to jointly negotiate with a carrier to exclude, limit or otherwise restrict a non-physician or non-dentist health care provider from participating in the carrier's

health benefits or dental plan based substantially on the fact that the health care provider is not a physician or dentist, unless that exclusion, limitation or restriction is otherwise permitted by law;

(4) prohibit or restrict activity by physicians or dentists that is sanctioned under federal or State law or subject such activity to the requirements of this act;

(5) affect governmental approval of, or otherwise restrict activity by, physicians or dentists that is not prohibited under federal antitrust law; or

(6) require approval of physician or dentist contract terms to the extent that the terms are exempt from State regulation under ERISA.

The substitute provides that its provisions shall not apply to a health benefits or dental plan which is certified by the Commissioner of Human Services to the Attorney General as providing covered services exclusively or primarily to persons who are eligible for Medicaid, NJ KidCare or NJ FamilyCare.

The substitute requires the Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, to report to the Governor and the Legislature no later than four years after its effective date on its implementation, and to include in that report an assessment of the impact that the substitute has had on health insurance premiums in the State. The report shall also include the Attorney General's recommendations as to whether the provisions of this act shall be expanded to include other types of health care professionals and facilities.

The Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, is further directed to report to the Governor and the Legislature no later than five years after the effective date of the substitute with his recommendation as to whether the provisions of the substitute shall be made permanent.

The substitute, which takes effect 90 days after enactment, is to expire six years after the effective date; however, it stipulates that its expiration shall not impair any contract negotiated pursuant to the substitute that is in effect on the date of expiration.

This substitute is identical to the Senate Committee Substitute (1R) for Senate Bill Nos. 1033 and 1098 (Bark/DiFrancesco/Matheussen/Singer), which the committee also reported without recommendation on this date.

P.L. 2001, CHAPTER 371, *approved January 8, 2002*
Senate Committee Substitute (*First Reprint*) for
Senate, Nos. 1033 and 1098

1 AN ACT providing for joint negotiations by physicians and dentists
2 with carriers and supplementing Title 52 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. The Legislature finds and declares that:

8 a. Active, robust and fully competitive markets for health care and
9 dental services provide the best opportunity for the residents of this
10 State to receive high-quality health care and dental services at an
11 appropriate cost;

12 b. A substantial amount of health care and dental services in this
13 State is purchased for the benefit of patients by health and dental
14 insurance carriers engaged in the financing of health care and dental
15 services or is otherwise delivered subject to the terms of agreements
16 between carriers and physicians and dentists;

17 c. Carriers are able to control the flow of patients to physicians
18 and dentists through compelling financial incentives for patients in
19 their health and dental benefits plans to utilize only the services of
20 physicians and dentists with whom the carriers have contracted;

21 d. Carriers also control the health care and dental services
22 rendered to patients through utilization management and other
23 managed care tools and associated coverage and payment policies;

24 e. Carriers are often able to virtually dictate the terms of the
25 contracts that they offer physicians and dentists and commonly offer
26 these contracts on a take-it-or-leave-it basis;

27 f. The power of carriers to unilaterally impose provider contract
28 terms jeopardizes the ability of physicians and dentists to deliver the
29 superior quality health care and dental services traditionally available
30 in this State;

31 g. Physicians and dentists do not have sufficient market power to
32 reject unfair provider contract terms offered by carriers that impede
33 their ability to deliver medically appropriate care without undue delay
34 or difficulties;

35 h. Inadequate reimbursement and other unfair payment terms
36 offered by carriers adversely affect the quality of patient care and
37 access to care by reducing the resources that physicians and dentists

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted December 4, 2000.

1 can devote to patient care and decreasing the time that physicians and
2 dentists are able to spend with their patients;

3 i. Inequitable reimbursement and other unfair payment terms also
4 endanger the health care infrastructure and medical progress by
5 diverting capital needed for reinvestment in the health care delivery
6 system, curtailing the purchase of state-of-the-art technology, the
7 pursuit of medical research, and expansion of medical services, all to
8 the detriment of the residents of this State;

9 j. The inevitable collateral reduction and migration of the health
10 care work force will also have negative consequences for the economy
11 of this State;

12 k. Empowering independent physicians and dentists to jointly
13 negotiate with carriers as provided in this act will help restore the
14 competitive balance and improve competition in the markets for health
15 care and dental services in this State, thereby providing benefits for
16 consumers, physicians and dentists and less dominant carriers;

17 l. This act is necessary and proper, and constitutes an appropriate
18 exercise of the authority of this State to regulate the business of
19 insurance and the delivery of health care and dental services;

20 m. The pro-competitive and other benefits of the joint negotiations
21 and related joint activity authorized by this act, including, but not
22 limited to, restoring the competitive balance in the market for health
23 care services, protecting access to quality patient care, promoting the
24 health care infrastructure and medical progress, and improving
25 communications, outweigh any potential anti-competitive effects of
26 this act; and

27 n. It is the intention of the Legislature to authorize independent
28 physicians and dentists to jointly negotiate with carriers and to qualify
29 such joint negotiations and related joint activities for the State-action
30 exemption to the federal antitrust laws through the articulated State
31 policy and active supervision provided under this act.

32

33 2. As used in this act:

34 "Carrier" means an insurance company, health service corporation,
35 hospital service corporation, medical service corporation or health
36 maintenance organization which is authorized to issue health benefits
37 plans in this State and a dental service corporation or dental plan
38 organization authorized to issue dental plans in this State.

39 "Covered person" means a person on whose behalf a carrier which
40 offers a health benefits or dental plan is obligated to pay benefits or
41 provide services pursuant to the plan.

42 "Covered service" means a health care or dental service provided
43 to a covered person under a health benefits or dental plan for which
44 the carrier is obligated to pay benefits or provide services.

45 "Dental plan" means a benefits plan which pays or provides dental
46 expense benefits for covered services and is delivered or issued for

1 delivery in this State by or through a dental carrier.

2 "Dentist" means a person who is licensed to practice dentistry by
3 the New Jersey State Board of Dentistry in accordance with the
4 provisions of Title 45 of the Revised Statutes.

5 "Health benefits plan" means a plan which pays or provides
6 hospital and medical expense benefits for covered services, and is
7 delivered or issued for delivery in this State by or through a carrier.
8 For the purposes of this act, health benefits plan shall not include the
9 following plans, policies or contracts: Medicare supplement coverage
10 and risk contracts, accident only, specified disease or other limited
11 benefit, credit, disability, long-term care, CHAMPUS supplement
12 coverage, coverage arising out of a workers' compensation or similar
13 law, automobile medical payment insurance, personal injury protection
14 insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.),
15 dental or vision care coverage only, or hospital expense or
16 confinement indemnity coverage only.

17 "Joint negotiation representative" means a representative selected
18 by two or more independent physicians or dentists to engage in joint
19 negotiations with a carrier on their behalf.

20 "Physician" means a person who is licensed to practice medicine
21 and surgery by the State Board of Medical Examiners in accordance
22 with the provisions of Title 45 of the Revised Statutes.

23 "Utilization management" means a system for reviewing the
24 appropriate and efficient allocation of health care or dental services
25 under a health benefits or dental plan in accordance with specific
26 guidelines, for the purpose of determining whether, or to what extent,
27 a health care or dental service that has been provided or is proposed
28 to be provided to a covered person is to be covered under the health
29 benefits or dental plan.

30

31 3. Two or more independent physicians or dentists who are
32 practicing in the service area of a carrier may jointly negotiate with a
33 carrier and engage in related joint activity, as provided in this act,
34 regarding non-fee-related matters which may affect patient care,
35 including, but not limited to, any of the following:

36 a. the definition of medical necessity and other conditions of
37 coverage;

38 b. utilization management criteria and procedures;

39 c. clinical practice guidelines;

40 d. preventive care and other medical management policies;

41 e. patient referral standards and procedures, including, but not
42 limited to, those applicable to out-of-network referrals;

43 f. drug formularies and standards and procedures for prescribing
44 off-formulary drugs;

45 g. quality assurance programs;

46 h. respective physician or dentist and carrier liability for the

- 1 treatment or lack of treatment of covered persons;
- 2 i. the methods and timing of payments;
- 3 j. other administrative procedures, including, but not limited to,
4 eligibility verification systems and claim documentation requirements
5 for covered persons;
- 6 k. credentialing standards and procedures for the selection,
7 retention and termination of participating physicians or dentists;
- 8 l. mechanisms for resolving disputes between the carrier and
9 physicians or dentists, including, but not limited to, the appeals
10 process for utilization management and credentialing determinations;
- 11 m. the health benefits or dental plans sold or administered by the
12 carrier in which the physicians or dentists are required to participate;
- 13 n. the formulation and application of reimbursement methodology;
- 14 o. the terms and conditions of physician or dentist contracts,
15 including, but not limited to, all products clauses, and the duration and
16 renewal provisions of the contract; and
- 17 p. the inclusion or alteration of a contractual term or condition,
18 except when the inclusion or alteration is required by a federal or State
19 regulation concerning that term or condition; however, the restriction
20 shall not limit a physician's or dentist's rights to jointly petition the
21 federal or State government, as applicable, to change the regulation.
22
- 23 4. a. Upon a finding by the Attorney General, in consultation with
24 the Commissioners of Banking and Insurance and Health and Senior
25 Services, that the carrier has substantial market power in its service
26 area and that any of the terms or conditions of the contract with the
27 carrier pose an actual or potential threat to the quality and availability
28 of patient care among covered persons, two or more independent
29 physicians or dentists who are practicing in the service area of a carrier
30 may jointly negotiate with the carrier and engage in related joint
31 activity, as provided in this act regarding fees and fee-related matters,
32 including, but not limited to, any of the following:
- 33 (1) the amount of payment or the methodology for determining the
34 payment for a health care or dental service, including, but not limited
35 to, cost of living increases;
- 36 (2) the conversion factor for a resource-based relative value scale
37 or similar reimbursement methodology for health care or dental
38 services;
- 39 (3) the amount of any discount on the price of a health care or
40 dental service;
- 41 (4) the procedure code or other description of a health care or
42 dental service covered by a payment and the appropriate grouping of
43 the procedure codes;
- 44 (5) the amount of a bonus related to the provision of health care
45 or dental services or a withholding from the payment due for a health
46 care or dental service; and

1 (6) the amount of any other component of the reimbursement
2 methodology for a health care or dental service.

3 b. The Department of Banking and Insurance, in consultation with
4 the Department of Health and Senior Services, shall have the authority
5 to collect and investigate such information as it reasonably believes is
6 necessary to determine, on an annual basis:

7 (1) the average number of covered lives and geographical
8 distribution of covered lives per quarter per county for every carrier
9 in the State; and

10 (2) the impact of the provisions of this section on average
11 physician or dentist fees in the State.

12 The Department of Banking and Insurance shall provide this
13 information to the Attorney General on an annual basis.

14
15 5. The exercise of joint negotiation rights by two or more
16 independent physicians or dentists who are practicing in the service
17 area of a carrier pursuant to this act shall conform to the following
18 criteria:

19 a. the physicians or dentists may communicate with each other
20 concerning any contractual term or condition to be negotiated with the
21 carrier;

22 b. the physicians or dentists may communicate with the joint
23 negotiation representative authorized to negotiate on their behalf with
24 the carrier concerning any contractual term or condition;

25 c. the joint negotiation representative shall be the sole party
26 authorized to negotiate with the carrier on behalf of the physicians or
27 dentists as a group;

28 d. the physicians or dentists may, at the option of each physician
29 or dentist, agree to be bound by the terms and conditions negotiated
30 by the joint negotiation representative; and

31 e. when communicating or negotiating with a joint negotiation
32 representative, a carrier may offer different contractual terms or
33 conditions to, or may contract with, individual independent physicians
34 or dentists.

35
36 6. The provisions of this act shall not apply to a health benefits or
37 dental plan which is certified by the Commissioner of Human Services
38 to the Attorney General as providing covered services exclusively or
39 primarily to persons who are eligible for medical assistance under
40 P.L.1968, c.413 (C.30:4D-1 et seq.), the Children's Health Care
41 Coverage Program under P.L.1997, c.272 (C.30:4I-1 et seq.) or the
42 FamilyCare Health Coverage Program under P.L.2000, c.71 (C.30:4J-
43 1 et seq.).

44
45 7. A person or entity which proposes to act as a joint negotiation
46 representative shall satisfy the following requirements:

1 a. Before entering into negotiations with a carrier on behalf of two
2 or more independent physicians or dentists, the joint negotiation
3 representative shall submit to the Attorney General, for his approval
4 pursuant to section 8 of this act, on a form and in a manner prescribed
5 by the Attorney General, a petition which identifies:

- 6 (1) the representative's name and business address;
- 7 (2) the names and business addresses of each physician or dentist
8 who will be represented by the identified representative;
- 9 (3) the ratio of the physicians or dentists requesting joint
10 representation to the total number of physicians or dentists who are
11 practicing within the geographic service area of the carrier;
- 12 (4) the carrier with which the representative proposes to enter into
13 negotiations on behalf of the identified physicians or dentists;
- 14 (5) the intended subject matter of the proposed negotiations with
15 the identified carrier;
- 16 (6) the representative's plan of operation and procedures to ensure
17 compliance with the provisions of this act;
- 18 (7) the anticipated effect of the proposed joint negotiations on the
19 quality and availability of health or dental care among covered
20 persons;
- 21 (8) the anticipated benefits of a contract between the identified
22 physicians or dentists and carrier;
- 23 (9) such other data, information and documents as the petitioners
24 desire to submit in support of their petition; and
- 25 (10) such other data, information and documents as the Attorney
26 General deems necessary.

27 The joint negotiation representative, upon submitting the petition,
28 shall pay a fee to the Attorney General in an amount, as determined by
29 the Attorney General, which shall be reasonable and necessary to
30 cover the costs associated with carrying out the provisions of this act.

31 b. After the joint negotiation representative and the carrier
32 identified pursuant to subsection a. of this section have reached an
33 agreement on the contractual terms or conditions that were the subject
34 matter of their negotiations, the joint negotiation representative shall
35 submit to the Attorney General, for his approval in accordance with
36 the provisions of section 8 of this act, a copy of the proposed contract
37 between the physicians or dentists identified pursuant to subsection a.
38 of this section and the carrier, as well as any plan of action which the
39 joint negotiation representative and the carrier may formally agree to
40 for the purpose of implementing the terms and conditions of the
41 contract.

42 c. Within 14 days after either party notifies the other party of its
43 decision to decline or terminate negotiations entered into pursuant to
44 this act, or after the date that a joint negotiation representative
45 requests that a carrier enter into such negotiations to which request
46 the plan fails to respond, the joint negotiation representative shall

1 report to the Attorney General that the negotiations have ended, on a
2 form and in a manner to be prescribed by the Attorney General. The
3 joint negotiation representative may resume negotiations with the
4 carrier no later than 60 days after reporting to the Attorney General
5 that the negotiations have ended, on the basis of the petition submitted
6 to the Attorney General pursuant to subsection a. of this section and
7 approved by the Attorney General in accordance with the provisions
8 of section 8 of this act. After that date, the joint negotiation
9 representative shall be required to submit a new petition and pay an
10 additional fee to the Attorney General pursuant to subsection a. of this
11 section, in order to engage in negotiations with the carrier under this
12 act.

13

14 8. a. The Attorney General shall provide written approval or
15 disapproval of a petition or a proposed contract furnished by a joint
16 negotiation representative pursuant to section 7 of this act no later
17 than 30 days after receipt of the petition or proposed contract, as
18 applicable. If the Attorney General fails to provide written approval
19 or disapproval within this time period, the joint negotiation
20 representative may petition a court of competent jurisdiction for an
21 order to require the Attorney General to take such action. If the
22 Attorney General disapproves the petition or the proposed contract,
23 he shall forward a written explanation of any deficiencies therein to the
24 joint negotiation representative along with a statement of the specific
25 remedial measures by which those deficiencies may be corrected.

26 A joint negotiation representative shall not engage in negotiations
27 with a carrier over any contractual term or condition unless the
28 petition furnished by the joint negotiation representative has been
29 approved in writing by the Attorney General, nor shall a proposed
30 contract between two or more independent physicians or dentists and
31 a carrier be implemented unless the Attorney General has approved the
32 contract.

33 b. The Attorney General shall approve a petition or a proposed
34 contract furnished by a joint negotiation representative pursuant to
35 section 7 of this act if the Attorney General determines that the
36 petition or proposed contract demonstrates that the benefits which are
37 likely to result from the proposed joint negotiations over a contractual
38 term or condition or the proposed contract, as applicable, outweigh
39 the disadvantages attributable to a reduction in competition that may
40 result from the proposed joint negotiations. In making his
41 determination, the Attorney General shall consider physician or dentist
42 distribution by specialty and its effect on competition in the geographic
43 service area of the carrier.

44 c. The Attorney General's written approval of a petition which is
45 furnished by a joint negotiation representative under section 7 of this
46 act shall be effective for all subsequent negotiations between the joint

1 negotiation representative and the identified carrier, subject to the
2 provisions of subsection c. of section 7 of this act.

3 d. In the case of a petition submitted pursuant to subsection a. of
4 section 7 of this act, the Attorney General shall notify the carrier of
5 the petition and provide the carrier with the opportunity to submit
6 written comments within a specified time frame that does not extend
7 beyond the date by which the Attorney General is required to act on
8 the petition.

9

10 9. a. Within 30 days from the mailing by the Attorney General of
11 a notice of disapproval of a petition submitted under section 7 of this
12 act, the petitioners may make a written application to the Attorney
13 General for a hearing.

14 b. Upon receipt of a timely written application for a hearing, the
15 Attorney General shall schedule and conduct a hearing in accordance
16 with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
17 1 et seq.). The hearing shall be held within 30 days of the application
18 unless the petitioner seeks an extension.

19 c. The sole parties with respect to any petition under section 7 of
20 this act shall be the petitioners, and notwithstanding any other
21 provision of law to the contrary, the Attorney General shall not be
22 required to treat any other person as a party and no other person shall
23 be entitled to appeal the Attorney General's determination.

24

25 10. All information, including documents and copies thereof,
26 obtained by or disclosed to the Attorney General or any other person
27 in a petition under section 7 of this act, shall be treated confidentially
28 and shall be deemed proprietary and shall not be made public or
29 otherwise disclosed by the Attorney General or any other person
30 without the written consent of the petitioners to whom the information
31 pertains.

32

33 11. A carrier and a joint negotiation representative shall negotiate
34 in good faith regarding the terms and conditions of physician or dentist
35 contracts pursuant to this act.

36

37 12. a. The provisions of this act shall not be construed to:

38 (1) permit two or more physicians or dentists to jointly engage in
39 a coordinated cessation, reduction or limitation of the health care or
40 dental services which they provide;

41 (2) permit two or more physicians or dentists to meet or
42 communicate in order to jointly negotiate a requirement that at least
43 one of the physicians or dentists, as a condition of participation with
44 a carrier, be allowed to participate in all of the products offered by the
45 carrier;

46 (3) permit two or more physicians or dentists to jointly negotiate

1 with a carrier to exclude, limit or otherwise restrict a non-physician or
2 non-dentist health care provider from participating in the carrier's
3 health benefits or dental plan based substantially on the fact that the
4 health care provider is not a physician or dentist, unless that exclusion,
5 limitation or restriction is otherwise permitted by law;

6 (4) prohibit or restrict activity by physicians or dentists that is
7 sanctioned under federal or State law or subject such activity to the
8 requirements of this act;

9 (5) affect governmental approval of, or otherwise restrict activity
10 by, physicians or dentists that is not prohibited under federal antitrust
11 law; or

12 (6) require approval of physician or dentist contract terms to the
13 extent that the terms are exempt from State regulation under section
14 514(a) of the "Employee Retirement Income Security Act of 1974,"
15 Pub.L.93-406 (29 U.S.C. s.1144(a)).

16 b. Prior to entering into negotiations with a carrier on behalf of
17 two or more independent physicians or dentists over a contractual
18 term or condition, a joint negotiation representative shall notify the
19 physicians or dentists in writing of the provisions of this act and advise
20 them as to their potential for legal action against physicians or dentists
21 who violate federal antitrust law.

22

23 13. The Attorney General, in consultation with the Commissioners
24 of Banking and Insurance and Health and Senior Services, shall report
25 to the Governor and the Legislature no later than four years after the
26 effective date of this act on its implementation.

27 The report shall include the number of petitions submitted for
28 approval to engage in joint negotiations and the outcome of the
29 petitions and the negotiations, an assessment of the effect the joint
30 negotiations provided for in this act has had in restoring the
31 competitive balance in the market for health care or dental services
32 and in protecting access to quality patient care, ¹an assessment of the
33 impact this act has had on health insurance premiums in the State,¹ and
34 such other information that the Attorney General deems appropriate.
35 The report shall also include the Attorney General's recommendations
36 as to whether the provisions of this act shall be expanded to include
37 other types of health care professionals and facilities.

38 ¹The Attorney General, in consultation with the Commissioners of
39 Banking and Insurance and Health and Senior Services, shall report to
40 the Governor and the Legislature no later than five years after the
41 effective date of this act with his recommendation as to whether this
42 act shall be made permanent.¹

43

44 14. The Attorney General, in consultation with the Commissioners
45 of Banking and Insurance and Health and Senior Services and pursuant
46 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1

1 et seq.), shall adopt rules and regulations to effectuate the purposes of
2 this act.

3
4 15. This act shall take effect 90 days after enactment ¹[, except
5 that the] and shall expire six years after the effective date, but the
6 expiration of this act shall not impair any contract negotiated pursuant
7 to this act that is in effect on the date of expiration. The¹ Attorney
8 General, in consultation with the Commissioners of Banking and
9 Insurance and Health and Senior Services, may take such anticipatory
10 administrative action in advance ¹of the effective date¹ as shall be
11 necessary to implement the act.

12

13

14

15

16 Allows physicians and dentists to jointly negotiate with carriers over
17 contractual terms and conditions.

CHAPTER 371

AN ACT providing for joint negotiations by physicians and dentists with carriers and supplementing Title 52 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.52:17B-196 Findings, declarations relative to joint negotiations by physicians and dentists with carriers.

1. The Legislature finds and declares that:

a. Active, robust and fully competitive markets for health care and dental services provide the best opportunity for the residents of this State to receive high-quality health care and dental services at an appropriate cost;

b. A substantial amount of health care and dental services in this State is purchased for the benefit of patients by health and dental insurance carriers engaged in the financing of health care and dental services or is otherwise delivered subject to the terms of agreements between carriers and physicians and dentists;

c. Carriers are able to control the flow of patients to physicians and dentists through compelling financial incentives for patients in their health and dental benefits plans to utilize only the services of physicians and dentists with whom the carriers have contracted;

d. Carriers also control the health care and dental services rendered to patients through utilization management and other managed care tools and associated coverage and payment policies;

e. Carriers are often able to virtually dictate the terms of the contracts that they offer physicians and dentists and commonly offer these contracts on a take-it-or-leave-it basis;

f. The power of carriers to unilaterally impose provider contract terms jeopardizes the ability of physicians and dentists to deliver the superior quality health care and dental services traditionally available in this State;

g. Physicians and dentists do not have sufficient market power to reject unfair provider contract terms offered by carriers that impede their ability to deliver medically appropriate care without undue delay or difficulties;

h. Inadequate reimbursement and other unfair payment terms offered by carriers adversely affect the quality of patient care and access to care by reducing the resources that physicians and dentists can devote to patient care and decreasing the time that physicians and dentists are able to spend with their patients;

i. Inequitable reimbursement and other unfair payment terms also endanger the health care infrastructure and medical progress by diverting capital needed for reinvestment in the health care delivery system, curtailing the purchase of state-of-the-art technology, the pursuit of medical research, and expansion of medical services, all to the detriment of the residents of this State;

j. The inevitable collateral reduction and migration of the health care work force will also have negative consequences for the economy of this State;

k. Empowering independent physicians and dentists to jointly negotiate with carriers as provided in this act will help restore the competitive balance and improve competition in the markets for health care and dental services in this State, thereby providing benefits for consumers, physicians and dentists and less dominant carriers;

l. This act is necessary and proper, and constitutes an appropriate exercise of the authority of this State to regulate the business of insurance and the delivery of health care and dental services;

m. The pro-competitive and other benefits of the joint negotiations and related joint activity authorized by this act, including, but not limited to, restoring the competitive balance in the market for health care services, protecting access to quality patient care, promoting the health care infrastructure and medical progress, and improving communications, outweigh any potential anti-competitive effects of this act; and

n. It is the intention of the Legislature to authorize independent physicians and dentists to jointly negotiate with carriers and to qualify such joint negotiations and related joint activities for the State-action exemption to the federal antitrust laws through the articulated State policy and active supervision provided under this act.

C.52:17B-197 Definitions relative to joint negotiations by physicians and dentists with carriers.

2. As used in this act:

"Carrier" means an insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization which is authorized to issue health benefits plans in this State and a dental service corporation or dental plan organization authorized to issue dental plans in this State.

"Covered person" means a person on whose behalf a carrier which offers a health benefits or dental plan is obligated to pay benefits or provide services pursuant to the plan.

"Covered service" means a health care or dental service provided to a covered person under a health benefits or dental plan for which the carrier is obligated to pay benefits or provide services.

"Dental plan" means a benefits plan which pays or provides dental expense benefits for covered services and is delivered or issued for delivery in this State by or through a dental carrier.

"Dentist" means a person who is licensed to practice dentistry by the New Jersey State Board of Dentistry in accordance with the provisions of Title 45 of the Revised Statutes.

"Health benefits plan" means a plan which pays or provides hospital and medical expense benefits for covered services, and is delivered or issued for delivery in this State by or through a carrier. For the purposes of this act, health benefits plan shall not include the following plans, policies or contracts: Medicare supplement coverage and risk contracts, accident only, specified disease or other limited benefit, credit, disability, long-term care, CHAMPUS supplement coverage, coverage arising out of a workers' compensation or similar law, automobile medical payment insurance, personal injury protection insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), dental or vision care coverage only, or hospital expense or confinement indemnity coverage only.

"Joint negotiation representative" means a representative selected by two or more independent physicians or dentists to engage in joint negotiations with a carrier on their behalf.

"Physician" means a person who is licensed to practice medicine and surgery by the State Board of Medical Examiners in accordance with the provisions of Title 45 of the Revised Statutes.

"Utilization management" means a system for reviewing the appropriate and efficient allocation of health care or dental services under a health benefits or dental plan in accordance with specific guidelines, for the purpose of determining whether, or to what extent, a health care or dental service that has been provided or is proposed to be provided to a covered person is to be covered under the health benefits or dental plan.

C.52:17B-198 Joint negotiations regarding non-fee related matters.

3. Two or more independent physicians or dentists who are practicing in the service area of a carrier may jointly negotiate with a carrier and engage in related joint activity, as provided in this act, regarding non-fee-related matters which may affect patient care, including, but not limited to, any of the following:

- a. the definition of medical necessity and other conditions of coverage;
- b. utilization management criteria and procedures;
- c. clinical practice guidelines;
- d. preventive care and other medical management policies;
- e. patient referral standards and procedures, including, but not limited to, those applicable to out-of-network referrals;
- f. drug formularies and standards and procedures for prescribing off-formulary drugs;
- g. quality assurance programs;
- h. respective physician or dentist and carrier liability for the treatment or lack of treatment of covered persons;
- i. the methods and timing of payments;
- j. other administrative procedures, including, but not limited to, eligibility verification systems and claim documentation requirements for covered persons;
- k. credentialing standards and procedures for the selection, retention and termination of

participating physicians or dentists;

l. mechanisms for resolving disputes between the carrier and physicians or dentists, including, but not limited to, the appeals process for utilization management and credentialing determinations;

m. the health benefits or dental plans sold or administered by the carrier in which the physicians or dentists are required to participate;

n. the formulation and application of reimbursement methodology;

o. the terms and conditions of physician or dentist contracts, including, but not limited to, all products clauses, and the duration and renewal provisions of the contract; and

p. the inclusion or alteration of a contractual term or condition, except when the inclusion or alteration is required by a federal or State regulation concerning that term or condition; however, the restriction shall not limit a physician's or dentist's rights to jointly petition the federal or State government, as applicable, to change the regulation.

C.52:17B-199 Joint negotiations regarding fees, fee related matters.

4. a. Upon a finding by the Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, that the carrier has substantial market power in its service area and that any of the terms or conditions of the contract with the carrier pose an actual or potential threat to the quality and availability of patient care among covered persons, two or more independent physicians or dentists who are practicing in the service area of a carrier may jointly negotiate with the carrier and engage in related joint activity, as provided in this act regarding fees and fee-related matters, including, but not limited to, any of the following:

(1) the amount of payment or the methodology for determining the payment for a health care or dental service, including, but not limited to, cost of living increases;

(2) the conversion factor for a resource-based relative value scale or similar reimbursement methodology for health care or dental services;

(3) the amount of any discount on the price of a health care or dental service;

(4) the procedure code or other description of a health care or dental service covered by a payment and the appropriate grouping of the procedure codes;

(5) the amount of a bonus related to the provision of health care or dental services or a withholding from the payment due for a health care or dental service; and

(6) the amount of any other component of the reimbursement methodology for a health care or dental service.

b. The Department of Banking and Insurance, in consultation with the Department of Health and Senior Services, shall have the authority to collect and investigate such information as it reasonably believes is necessary to determine, on an annual basis:

(1) the average number of covered lives and geographical distribution of covered lives per quarter per county for every carrier in the State; and

(2) the impact of the provisions of this section on average physician or dentist fees in the State.

The Department of Banking and Insurance shall provide this information to the Attorney General on an annual basis.

C.52:17B-200 Criteria for exercise of joint negotiation rights.

5. The exercise of joint negotiation rights by two or more independent physicians or dentists who are practicing in the service area of a carrier pursuant to this act shall conform to the following criteria:

a. the physicians or dentists may communicate with each other concerning any contractual term or condition to be negotiated with the carrier;

b. the physicians or dentists may communicate with the joint negotiation representative authorized to negotiate on their behalf with the carrier concerning any contractual term or condition;

c. the joint negotiation representative shall be the sole party authorized to negotiate with the carrier on behalf of the physicians or dentists as a group;

d. the physicians or dentists may, at the option of each physician or dentist, agree to be bound by the terms and conditions negotiated by the joint negotiation representative; and

e. when communicating or negotiating with a joint negotiation representative, a carrier may offer different contractual terms or conditions to, or may contract with, individual independent physicians or dentists.

C.52:17B-201 Inapplicability of act.

6. The provisions of this act shall not apply to a health benefits or dental plan which is certified by the Commissioner of Human Services to the Attorney General as providing covered services exclusively or primarily to persons who are eligible for medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.), the Children's Health Care Coverage Program under P.L.1997, c.272 (C.30:4I-1 et seq.) or the FamilyCare Health Coverage Program under P.L.2000, c.71 (C.30:4J-1 et seq.).

C.52:17B-202 Requirements to act as joint negotiation representative.

7. A person or entity which proposes to act as a joint negotiation representative shall satisfy the following requirements:

a. Before entering into negotiations with a carrier on behalf of two or more independent physicians or dentists, the joint negotiation representative shall submit to the Attorney General, for his approval pursuant to section 8 of this act, on a form and in a manner prescribed by the Attorney General, a petition which identifies:

- (1) the representative's name and business address;
- (2) the names and business addresses of each physician or dentist who will be represented by the identified representative;
- (3) the ratio of the physicians or dentists requesting joint representation to the total number of physicians or dentists who are practicing within the geographic service area of the carrier;
- (4) the carrier with which the representative proposes to enter into negotiations on behalf of the identified physicians or dentists;
- (5) the intended subject matter of the proposed negotiations with the identified carrier;
- (6) the representative's plan of operation and procedures to ensure compliance with the provisions of this act;
- (7) the anticipated effect of the proposed joint negotiations on the quality and availability of health or dental care among covered persons;
- (8) the anticipated benefits of a contract between the identified physicians or dentists and carrier;
- (9) such other data, information and documents as the petitioners desire to submit in support of their petition; and
- (10) such other data, information and documents as the Attorney General deems necessary.

The joint negotiation representative, upon submitting the petition, shall pay a fee to the Attorney General in an amount, as determined by the Attorney General, which shall be reasonable and necessary to cover the costs associated with carrying out the provisions of this act.

b. After the joint negotiation representative and the carrier identified pursuant to subsection a. of this section have reached an agreement on the contractual terms or conditions that were the subject matter of their negotiations, the joint negotiation representative shall submit to the Attorney General, for his approval in accordance with the provisions of section 8 of this act, a copy of the proposed contract between the physicians or dentists identified pursuant to subsection a. of this section and the carrier, as well as any plan of action which the joint negotiation representative and the carrier may formally agree to for the purpose of implementing the terms and conditions of the contract.

c. Within 14 days after either party notifies the other party of its decision to decline or terminate negotiations entered into pursuant to this act, or after the date that a joint negotiation representative requests that a carrier enter into such negotiations to which request the plan fails

to respond, the joint negotiation representative shall report to the Attorney General that the negotiations have ended, on a form and in a manner to be prescribed by the Attorney General. The joint negotiation representative may resume negotiations with the carrier no later than 60 days after reporting to the Attorney General that the negotiations have ended, on the basis of the petition submitted to the Attorney General pursuant to subsection a. of this section and approved by the Attorney General in accordance with the provisions of section 8 of this act. After that date, the joint negotiation representative shall be required to submit a new petition and pay an additional fee to the Attorney General pursuant to subsection a. of this section, in order to engage in negotiations with the carrier under this act.

C.52:17B-203 Powers, duties of Attorney General.

8. a. The Attorney General shall provide written approval or disapproval of a petition or a proposed contract furnished by a joint negotiation representative pursuant to section 7 of this act no later than 30 days after receipt of the petition or proposed contract, as applicable. If the Attorney General fails to provide written approval or disapproval within this time period, the joint negotiation representative may petition a court of competent jurisdiction for an order to require the Attorney General to take such action. If the Attorney General disapproves the petition or the proposed contract, he shall forward a written explanation of any deficiencies therein to the joint negotiation representative along with a statement of the specific remedial measures by which those deficiencies may be corrected.

A joint negotiation representative shall not engage in negotiations with a carrier over any contractual term or condition unless the petition furnished by the joint negotiation representative has been approved in writing by the Attorney General, nor shall a proposed contract between two or more independent physicians or dentists and a carrier be implemented unless the Attorney General has approved the contract.

b. The Attorney General shall approve a petition or a proposed contract furnished by a joint negotiation representative pursuant to section 7 of this act if the Attorney General determines that the petition or proposed contract demonstrates that the benefits which are likely to result from the proposed joint negotiations over a contractual term or condition or the proposed contract, as applicable, outweigh the disadvantages attributable to a reduction in competition that may result from the proposed joint negotiations. In making his determination, the Attorney General shall consider physician or dentist distribution by specialty and its effect on competition in the geographic service area of the carrier.

c. The Attorney General's written approval of a petition which is furnished by a joint negotiation representative under section 7 of this act shall be effective for all subsequent negotiations between the joint negotiation representative and the identified carrier, subject to the provisions of subsection c. of section 7 of this act.

d. In the case of a petition submitted pursuant to subsection a. of section 7 of this act, the Attorney General shall notify the carrier of the petition and provide the carrier with the opportunity to submit written comments within a specified time frame that does not extend beyond the date by which the Attorney General is required to act on the petition.

C.52:17B-204 Application for hearing.

9. a. Within 30 days from the mailing by the Attorney General of a notice of disapproval of a petition submitted under section 7 of this act, the petitioners may make a written application to the Attorney General for a hearing.

b. Upon receipt of a timely written application for a hearing, the Attorney General shall schedule and conduct a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The hearing shall be held within 30 days of the application unless the petitioner seeks an extension.

c. The sole parties with respect to any petition under section 7 of this act shall be the petitioners, and notwithstanding any other provision of law to the contrary, the Attorney General shall not be required to treat any other person as a party and no other person shall be entitled to appeal the Attorney General's determination.

C.52:17B-205 Confidentiality of information.

10. All information, including documents and copies thereof, obtained by or disclosed to the Attorney General or any other person in a petition under section 7 of this act, shall be treated confidentially and shall be deemed proprietary and shall not be made public or otherwise disclosed by the Attorney General or any other person without the written consent of the petitioners to whom the information pertains.

C.52:17B-206 Good faith negotiation required.

11. A carrier and a joint negotiation representative shall negotiate in good faith regarding the terms and conditions of physician or dentist contracts pursuant to this act.

C.52:17B-207 Construction of act.

12. a. The provisions of this act shall not be construed to:

(1) permit two or more physicians or dentists to jointly engage in a coordinated cessation, reduction or limitation of the health care or dental services which they provide;

(2) permit two or more physicians or dentists to meet or communicate in order to jointly negotiate a requirement that at least one of the physicians or dentists, as a condition of participation with a carrier, be allowed to participate in all of the products offered by the carrier;

(3) permit two or more physicians or dentists to jointly negotiate with a carrier to exclude, limit or otherwise restrict a non-physician or non-dentist health care provider from participating in the carrier's health benefits or dental plan based substantially on the fact that the health care provider is not a physician or dentist, unless that exclusion, limitation or restriction is otherwise permitted by law;

(4) prohibit or restrict activity by physicians or dentists that is sanctioned under federal or State law or subject such activity to the requirements of this act;

(5) affect governmental approval of, or otherwise restrict activity by, physicians or dentists that is not prohibited under federal antitrust law; or

(6) require approval of physician or dentist contract terms to the extent that the terms are exempt from State regulation under section 514(a) of the "Employee Retirement Income Security Act of 1974," Pub.L.93-406 (29 U.S.C. s.1144(a)).

b. Prior to entering into negotiations with a carrier on behalf of two or more independent physicians or dentists over a contractual term or condition, a joint negotiation representative shall notify the physicians or dentists in writing of the provisions of this act and advise them as to their potential for legal action against physicians or dentists who violate federal antitrust law.

C.52:17B-208 Report to Governor, Legislature by Attorney General.

13. The Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, shall report to the Governor and the Legislature no later than four years after the effective date of this act on its implementation.

The report shall include the number of petitions submitted for approval to engage in joint negotiations and the outcome of the petitions and the negotiations, an assessment of the effect the joint negotiations provided for in this act has had in restoring the competitive balance in the market for health care or dental services and in protecting access to quality patient care, an assessment of the impact this act has had on health insurance premiums in the State, and such other information that the Attorney General deems appropriate. The report shall also include the Attorney General's recommendations as to whether the provisions of this act shall be expanded to include other types of health care professionals and facilities.

The Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, shall report to the Governor and the Legislature no later than five years after the effective date of this act with his recommendation as to whether this act shall be made permanent.

C.52:17B-209 Rules, regulations.

14. The Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services and pursuant to the "Administrative Procedure Act," P.L.1968,

c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations to effectuate the purposes of this act.

15. This act shall take effect 90 days after enactment and shall expire six years after the effective date, but the expiration of this act shall not impair any contract negotiated pursuant to this act that is in effect on the date of expiration. The Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, may take such anticipatory administrative action in advance of the effective date as shall be necessary to implement the act.

Approved January 8, 2002.