

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

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED JUNE 4, 2001

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District 7 (Burlington and Camden)

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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

(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.

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.

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.).

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

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.