

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.