By Representative Negron

A bill to be entitled

An act relating to physician collective negotiations; providing legislative findings; providing definitions; authorizing competing physicians within a health plan service area to meet and communicate for collective negotiation of certain contract terms and conditions; providing a prohibition; providing an exception; imposing criteria on such collective negotiations; providing requirements for physicians' representatives; providing duties of the Department of Insurance; providing for antitrust application; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Physician collective negotiations.--

(1) The Legislature finds that collective negotiation by competing physicians of certain terms and conditions of contracts with health plans will result in procompetitive effects in the absence of any express or implied threat of retaliatory collective action by physicians, such as a boycott or strike. Although the Legislature finds that collective negotiations over fee-related terms may in some circumstances yield anticompetitive effects, the Legislature also recognizes that there are instances in which health plans dominate the market to such a degree that fair negotiations between physicians and health plans are unobtainable absent any collective action on behalf of physicians. In these instances, health plans have the ability to virtually dictate

the terms of the contracts they offer physicians. Consequently, the Legislature finds it appropriate and necessary to authorize collective negotiations over fee-related and other issues when such imbalances exist.

(2) For purposes of this act:

(a) "Health plan" means any health maintenance organization as defined in s. 641.19, Florida Statutes, or any prepaid health clinic as defined in s. 641.402, Florida Statutes.

(b) "Department" means the Department of Insurance.

(c) "Person" means an individual, association, or corporation, or any other legal entity.

(d) "Physicians' representative" means a third party, including a member of the physicians' group who will engage in joint negotiations, who is authorized by physicians to negotiate on their behalf with health benefit plans over contractual terms and conditions affecting those physicians.

(3) Competing physicians within the service area of a health plan may meet and communicate for the purpose of collectively negotiating the following terms and conditions of contracts with the health plan:

(a) Practices and procedures to assess and improve the delivery of effective, cost-efficient preventive health care services, including, but not limited to, childhood immunizations, prenatal care, mammograms, and other cancer screening tests or procedures.

(b) Practices and procedures to encourage early detection and effective, cost-efficient management of diseases and illnesses in children.

(c) Practices and procedures to assess and improve the delivery of women's medical and health care, including, but

not limited to, care associated with menopause and osteoporosis.

(d) Clinical criteria for effective, cost-efficient disease management programs, including, but not limited to, programs associated with diabetes, asthma, and cardiovascular disease.

(e) Practices and procedures to encourage and promote patient education and treatment compliance, including, but not limited to, parental involvement in children's health care.

(f) Practices and procedures to identify, correct, and prevent potentially fraudulent activities.

(g) Practices and procedures for the effective, cost-efficient use of outpatient surgery.

(h) Clinical practice guidelines and coverage criteria.

(i) Respective physician and health plan liability for the treatment or lack of treatment of health plan enrollees.

(j) Administrative procedures, including methods and timing of physician payment for services.

(k) Dispute resolution procedures relating to disputes between health plans and physicians.

(l) Patient referral procedures.

(m) Formulation and application of reimbursement methodology.

(n) Quality assurance programs.

(o) Health service utilization review procedures.

(p) Health plan physician selection and termination criteria or whether to engage in selective contracting.

(q) The inclusion or alteration of terms and conditions to the extent they are the subject of government regulation prohibiting or requiring the particular term or

condition in question; however, such restriction does not limit physician rights to collectively petition government for a change in such regulation. Nothing in this paragraph shall be construed to allow a boycott.

(4) Except as provided in subsection (5), competing physicians shall not meet and communicate for the purposes of collectively negotiating the following terms and conditions of contracts with health plans:

(a) The fees or prices for services, including those arrived at by applying any reimbursement methodology procedures.

(b) The conversion factors in a resource-based relative value scale reimbursement methodology or similar methodologies.

(c) The amount of any discount on the price of services to be rendered by physicians.

(d) The dollar amount of capitation or fixed payment for health services rendered by physicians to health plan enrollees.

(5) Competing physicians within the service area of a health plan may collectively negotiate the terms and conditions specified in subsection (4) if the health plan has substantial market power. Substantial market power is deemed to exist if the health plan's market share exceeds 15 percent, as measured by:

(a) The number of covered lives as reported by the Insurance Commissioner; or

(b) The actual number of consumers of prepaid comprehensive health services.

Substantial market power is also deemed to exist if a health plan's market share exceeds 15 percent within a particular market segment, broken down into the Medicare, Medicaid, commercial managed care, and health maintenance organization market segments.

(6) Competing physicians' exercise of collective negotiation rights granted by subsections (3) and (5) shall conform to the following criteria:

(a) Physicians may communicate with each other with respect to the contractual terms and conditions to be negotiated with a health plan.

(b) Physicians may communicate with a physicians' representative who is authorized to negotiate on their behalf with health plans over such contractual terms and conditions.

(c) The physicians' representative is the sole party authorized to negotiate with health plans on behalf of the physicians as a group.

(d) Physicians may be bound by the terms and conditions negotiated by the physicians' representative authorized to represent their interests.

(e) Health plans communicating or negotiating with the physicians' representative shall remain free to contract with or offer different contract terms and conditions to individual competing physicians.

(f) The physicians' representative shall not represent more than 30 percent of the market of practicing physicians for the provision of services or a particular physician type or specialty in the service area or proposed service area of a health plan with less than 5 percent of the market, as measured by:

1. The number of covered lives as reported by the Insurance Commissioner; or

2. The actual number of consumers of prepaid comprehensive health services.

(g) The physicians' representative shall comply with the provisions of subsection (7).

(7) Any person or organization proposing to act or acting as a physicians' representative for the purpose of exercising authority granted under this act shall comply with the following requirements:

(a) Before engaging in any collective negotiations with health plans on behalf of competing physicians, the representative shall file with the department information identifying the representative, the representative's plan of operation, and the representative's procedures to ensure compliance with this section.

(b) Before engaging in any collective negotiations with health plans on behalf of competing physicians, the representative shall provide to the department a report identifying the proposed subject matter of the negotiations or discussions with health plans and the efficiencies or benefits expected to be achieved by such negotiations. The department shall approve or disapprove the negotiations proposed in the report. The department shall withhold approval if the proposed negotiations would exceed the authority granted under this act. The representative shall supplement the report to the department as new information becomes available that indicates that the subject matter of the negotiations with the health plan has changed or will change.

(c) Within 14 days after a health plan decision declining negotiation, terminating negotiation, or failing to

respond to a request for negotiation, the representative shall report to the department that negotiations have ceased.

(d) Before reporting the results of negotiations with a health plan and before giving physicians an evaluation of any offer made by a health plan, the representative shall furnish for the department's approval, prior to dissemination to physicians, a copy of all communications to be made to physicians related to negotiations, discussions, and health plan offers.

(8) With the advice of the Attorney General, the department shall, within 30 days after the report required in paragraph (7)(b) is filed, either approve or disapprove the negotiations proposed in the report. If the department disapproves the negotiations, the department shall furnish to the physicians' representative a written explanation of any deficiencies along with a statement of specific remedial measures through which such deficiencies could be corrected. A physicians' representative who conducts negotiations proposed in the report without the department's approval is deemed to act outside the authority granted under this act.

(9) Nothing contained in this act is intended to authorize competing physicians to act in concert in response to a report issued by the physicians' representative related to the representative's discussions or negotiations with health plans. The physicians' representative shall advise physicians of the provisions of this subsection and shall warn physicians of the potential for legal action against physicians who violate state or federal antitrust laws by exceeding the authority granted under this act.

Section 2. This act shall take effect October 1, 2001.

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HOUSE SUMMARY

Authorizes competing physicians within a health plan service area to meet and communicate for collective negotiation of contract terms and conditions. Imposes criteria on such collective negotiations. Provides requirements for physicians' representatives. See bill for details.