

SENATE, No. 3866

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED MAY 15, 2023

Sponsored by:

Senator JOSEPH A. LAGANA
District 38 (Bergen and Passaic)

SYNOPSIS

Authorizes health care providers to negotiate with carriers regarding fee- and non-fee-related matters.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain joint contract negotiations and
2 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. Health care is inclusive of many specific disciplines working
9 together to promote the well-being of patients, including the oral
10 health care provided by general and specialized dentists;

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

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

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

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

27 f. Carriers are often able to virtually dictate the terms of the
28 contracts that they offer health care providers and commonly offer these
29 contracts on a take-it-or-leave-it basis;

30 g. The power of carriers to unilaterally impose provider contract
31 terms jeopardizes the ability of health care providers to deliver the
32 superior quality health care and dental services traditionally available in
33 this State;

34 h. Health care providers do not have sufficient market power to
35 reject carriers' contract terms that impede their ability to deliver
36 medically appropriate care without undue delay or difficulties;

37 i. Inadequate reimbursement and other unfair payment terms that
38 are advantageous to carriers adversely affect the quality of patient care
39 and access to care by reducing the resources that health care providers
40 can devote to patient care and decreasing the time that health care
41 providers are able to spend with their patients;

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

1 k. The inevitable collateral reduction and migration of the health
2 care work force will also have negative consequences for the economy
3 of this State;

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

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

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

19 o. It is the intention of the Legislature to authorize independent
20 health care providers to jointly negotiate with carriers and to qualify
21 such joint negotiations and related joint activities for the State-action
22 exemption to the federal antitrust laws through the articulated State
23 policy and active supervision provided under this act.
24

25 2. As used in this act:

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

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

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

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

41 "Health benefits plan" means a plan which pays or provides
42 hospital and medical expense benefits for covered services, and is
43 delivered or issued for delivery in this State by or through a carrier.
44 For the purposes of this act, "health benefits plan" shall not include
45 the following plans, policies or contracts: Medicare supplement
46 coverage and risk contracts, accident only, specified disease or other
47 limited benefit, credit, disability, long-term care, TRICARE
48 supplement coverage, coverage arising out of a workers'

1 compensation or similar law, automobile medical payment insurance,
2 personal injury protection insurance issued pursuant to P.L.1972,
3 c.70 (C.39:6A-1 et seq.), or hospital expense or confinement
4 indemnity coverage only.

5 "Health care provider" means a person who is licensed by the State
6 of New Jersey to provide health care services under the provisions of
7 Title 45 of the Revised Statutes.

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

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

18

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

24 a. the definition of medical necessity and other conditions of
25 coverage;

26 b. utilization management criteria and procedures;

27 c. clinical practice guidelines;

28 d. preventive care and other medical management policies;

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

31 f. drug formularies and standards and procedures for prescribing
32 off-formulary drugs;

33 g. quality assurance programs;

34 h. respective health care providers and carrier liability for the
35 treatment or lack of treatment of covered persons;

36 i. the methods and timing of payments;

37 j. other administrative procedures, including, but not limited to,
38 eligibility verification systems and claim documentation
39 requirements for covered persons;

40 k. credentialing standards and procedures for the selection,
41 retention and termination of participating health care providers;

42 l. mechanisms for resolving disputes between the carrier and
43 health care providers, including, but not limited to, the appeals
44 process for utilization management and credentialing determinations;

45 m. the health benefits or dental plans sold or administered by the
46 carrier in which the health care providers are required to participate;

47 n. the formulation and application of reimbursement
48 methodology;

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

1 (3) the medical loss ratio of each carrier for every line of
2 insurance in which a plan is issued.

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 health care providers 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 health care providers may communicate with each other
11 concerning any contractual term or condition to be negotiated with
12 the carrier;

13 b. the health care providers may communicate with the joint
14 negotiation representative authorized to negotiate on their behalf
15 with 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 health care
18 providers as a group;

19 d. the health care providers may, at the option of each health care
20 provider, 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 health
25 care providers.

26

27 6. The provisions of this act shall not apply to a health benefits,
28 dental plan, or vision plan which is certified by the Commissioner of
29 Human Services to the Attorney General as providing covered
30 services exclusively or primarily to persons who are eligible for
31 medical assistance under P.L.1968, c.413 (C.30:4D-1 et seq.) or the
32 FamilyCare Health Coverage Program under P.L.2005, c.156
33 (C.30:4J-8 et seq.).

34

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

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

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

43 (2) the names and business addresses of each health care provider
44 who will be represented by the identified joint negotiation
45 representative;

46 (3) the ratio of the health care providers requesting joint
47 representation to the total number of health care providers who are
48 practicing within the geographic service area of the carrier;

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

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

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

31 c. Within 14 days after either party notifies the other party of its
32 decision to decline or terminate negotiations entered into pursuant to
33 this act, or after the date that a joint negotiation representative
34 requests that a carrier enter into such negotiations to which request
35 the plan fails to respond, the joint negotiation representative shall
36 report to the Attorney General that the negotiations have ended, on a
37 form and in a manner to be prescribed by the Attorney General. The
38 Attorney General may, within 30 days of a termination, make a binding
39 determination as to the merits of the joint negotiation request. Should
40 the Attorney General determine sufficient cause for the negotiation to
41 occur, then the carrier shall be compelled to jointly negotiate with the
42 negotiation representative as set forth in this act. If the Attorney
43 General does not find a compelling need for a joint negotiation to occur,
44 the joint negotiation representative may resume negotiations with the
45 carrier no later than 90 days after reporting to the Attorney General that
46 the negotiations have ended, on the basis of the petition submitted to
47 the Attorney General pursuant to subsection a. of this section and
48 approved by the Attorney General in accordance with the provisions

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

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

20 Should the Attorney General approve of the joint negotiation, then
21 the carrier shall be required to engage with the joint negotiation
22 representative.

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

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

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

46 d. In the case of a petition submitted pursuant to subsection a. of
47 section 7 of this act, the Attorney General shall notify the carrier of
48 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 45 days from the mailing by the Attorney General
6 of a notice of disapproval of a petition submitted under section 7 of
7 this act, the petitioners may make a written application to the
8 Attorney 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
12 (C.52:14B-1 et seq.). The hearing shall be held within 45 days of the
13 application unless the petitioner seeks an extension.

14 c. The sole parties with respect to any petition under section 7
15 of 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
26 information pertains.

27

28 11. A carrier and a joint negotiation representative shall negotiate
29 in good faith regarding the terms and conditions of health care
30 provider 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 health care providers 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 health care providers to meet or
37 communicate in order to jointly negotiate a requirement that at least
38 one of the health care providers, as a condition of participation with
39 a carrier, be allowed to participate in all of the products offered by
40 the carrier;

41 (3) permit two or more health care providers to jointly negotiate
42 with a carrier to exclude, limit or otherwise restrict a provider from
43 another health care profession 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 in the same profession as the health care
46 providers participating in the joint negotiation, unless that exclusion,
47 limitation or restriction is otherwise permitted by law;

1 (4) prohibit or restrict activity by health care providers 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, health care providers that is not prohibited under federal antitrust
6 law; or

7 (6) require approval of health care provider 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 health care providers over a contractual
13 term or condition, a joint negotiation representative shall notify the
14 health care providers in writing of the provisions of this act and
15 advise them as to their potential for legal action against health care
16 providers who violate federal antitrust law.

17

18 13. a. The Attorney General, in consultation with the
19 Commissioner of Banking and Insurance, shall report annually to the
20 Governor and the Legislature on the implementation of this act.

21 b. The report shall include:

22 (1) the number of petitions submitted for approval to engage in
23 joint negotiations and the outcome of the petitions and the
24 negotiations;

25 (2) an assessment of the effect the joint negotiations provided for
26 in this act have had in restoring the competitive balance in the market
27 for health care or dental services and in protecting access to quality
28 patient care;

29 (3) an assessment of the impact this act has had on health
30 insurance premiums in the State;

31 (4) the recommendations of the Attorney General as to whether
32 the provisions of this act shall be expanded to include other types of
33 health care facilities; and

34 (5) such other information that the Attorney General deems
35 appropriate.

36

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

41

42 15. This act shall take effect on the 90th day after enactment. The
43 Attorney General, in consultation with the Commissioner of Banking
44 and Insurance, may take such anticipatory administrative action in
45 advance of the effective date as shall be necessary for the
46 implementation of this act.

STATEMENT

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This bill authorizes health care providers to be involved with joint negotiations on the terms and conditions of contracts with health and dental insurance carriers. Under the bill, two or more health care providers authorized by the State to provide services in a health care profession are allowed to participate in a joint negotiation. The negotiations would be carried out through a joint negotiation representative selected by a health care provider to act on their behalf.

In the bill, two or more health care providers practicing in a service area of a carrier can jointly negotiate, and engage in related joint activity, regarding non-fee-related matters which may affect patient care, including (1) the definition of medical necessity and other conditions of coverage; (2) clinical practice guidelines; and (3) any provider rating program and the ability to appeal a carrier's rating of a provider.

In addition, the bill establishes that if the Attorney General, in consultation with the Commissioner of Banking and Insurance, finds that a 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 health care providers may jointly negotiate with the carrier, and engage in related joint activity, on fees and fee-related matters. This includes such items as (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 amount of any discount on the price of a health care or dental service; and (3) 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.

The bill also establishes that, before entering into negotiations, a person or entity which proposes to act as a joint negotiation representative is to submit a petition to enter into negotiations to the Attorney General for approval. The petition is to identify, among other items, the representative, the health care providers who the representative will represent, and the intended subject matter of the proposed negotiations.

Under the bill, a process is established regarding the steps necessary for when the joint negotiation representative and the carrier have reached an agreement on the contractual terms or conditions that were the subject matter of negotiations. The bill also stipulates that if a party to the negotiations decides to decline or terminate negotiations, within 14 days of this decision, the joint negotiation representative is to report to the Attorney General that negotiations have ended. The Attorney General may, within 30 days of a termination, make a binding determination as to the merits of the joint

1 negotiation request. The bill also establishes the process by which the
2 Attorney General is to provide written approval or disapproval of a
3 petition or proposed contract furnished by a joint negotiation
4 representative. A decision by the Attorney General to approve or
5 disapprove is to be rendered within 30 days after receipt of the
6 petition or proposed contract. If that timeline passes with no decision
7 rendered, the joint negotiation representative may petition a court for
8 an order to require a decision from the Attorney General. The
9 petition or proposed contract is to be approved by the Attorney
10 General shall approve a petition or a proposed contract if a
11 determination is made that the petition or proposed contract
12 demonstrates that the benefits which are likely to result from the
13 proposed joint negotiations or contract outweigh the disadvantages
14 attributable to a reduction in competition that may result from the
15 proposed joint negotiations. If a decision is made to disapprove of a
16 petition or proposed contract, a petitioner has 45 days to submit a
17 written request to the Attorney General for a hearing.

18 Lastly, the bill requires the Attorney General, in consultation with
19 the Commissioner of Banking and Insurance, to report annually to
20 the Governor and the Legislature on the implementation of the bill.
21 The report is to include, among other items, an assessment of the
22 impact that the bill has had on health insurance premiums in the State.
23 The report is to also include the recommendations of the Attorney
24 General as to whether the provisions of the substitute should be
25 expanded to include other types of health care facilities.