

FIRST REGULAR SESSION

HOUSE BILL NO. 723

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES COOPER (155) (Sponsor), SCHAAF,
THRELKELD AND PAGE (Co-sponsors).

Read 1st time March 7, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1947L.011

AN ACT

To amend chapter 334, RSMo, by adding thereto one new section relating to joint negotiations of physicians.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 334, RSMo, is amended by adding thereto one new section, to be known as section 334.300, to read as follows:

334.300. 1. As used in this section, the following terms mean:

- (1) "Carrier", an insurance company, health service corporation, hospital service corporation, medical service corporation, or health maintenance organization which is authorized to issue health benefits plans in this state;
- (2) "Covered person", a person on whose behalf a carrier offers health benefits, is obligated to pay benefits, or provides services under the plan;
- (3) "Covered service", a health care service provided to a covered person under a health benefits plan for which the carrier is obligated to pay benefits or provide services;
- (4) "Health benefits plan", a plan which pays or provides hospital and medical expense benefits for covered services, and is delivered or issued for delivery in this state by or through a carrier. For purposes of this section, health benefits plan shall not include the following plans, policies, or contracts: Medicare supplement coverage and risk contracts, accident only, specified disease or other limited benefit, credit, disability, long-term care, CHAMPUS supplement coverage, coverage arising out of a workers' compensation or similar law, automobile medical payment insurance, personal injury

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

16 protection insurance issued under chapter 303, RSMo, dental or vision care coverage only,
17 or hospital expense or confinement indemnity coverage only;

18 (5) "Joint negotiation representative", a representative selected by two or more
19 independent physicians to engage in joint negotiations with a carrier on their behalf;

20 (6) "Physician", a person currently licensed to practice medicine and surgery by
21 the state under this chapter;

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

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

31 (1) The definition of medical necessity and other conditions of coverage;

32 (2) Utilization management criteria and procedures;

33 (3) Clinical practice guidelines;

34 (4) Preventive care and other medical management policies;

35 (5) Patient referral standards and procedures, including, but not limited to, those
36 applicable to out-of-network referrals;

37 (6) Drug formularies and standards and procedures for prescribing nonformulary
38 drugs;

39 (7) Quality assurance programs;

40 (8) Respective physician and carrier liability for the treatment or lack of treatment
41 of covered persons;

42 (9) The methods and timing of payments;

43 (10) Other administrative procedures, including, but not limited to, eligibility
44 verification systems and claim documentation requirements for covered persons;

45 (11) Credentialing standards and procedures for the selection, retention, and
46 termination of participating physicians;

47 (12) Mechanisms for resolving disputes between the carrier and physicians,
48 including, but not limited to, the appeals process for utilization management and
49 credentialing determinations;

50 (13) The health benefits plans sold or administered by the carrier in which the
51 physicians are required to participate;

52 (14) The formulation and application of reimbursement methodology;

53 (15) The terms and conditions of physician contracts, including, but not limited to,
54 all products clauses, and the duration and renewal provisions of the contract; and

55 (16) The inclusion or alteration of a contractual term or condition, except when the
56 inclusion or alteration is required by a federal or state regulation concerning that term or
57 condition; however, the restriction shall not limit a physician's rights to jointly petition the
58 federal or state government, as applicable, to change the regulation.

59 3. (1) Upon a finding by the attorney general, in consultation with the directors of
60 the department of insurance and the department of health and senior services, that the
61 carrier has substantial market power in its service area and that any of the terms or
62 conditions of the contract with the carrier pose an actual or potential threat to the quality
63 and availability of patient care among covered persons, two or more independent
64 physicians who are practicing in the service area of a carrier may jointly negotiate with the
65 carrier and engage in related joint activity, as provided in this section regarding fees and
66 fee-related matters, including, but not limited to, any of the following:

67 (a) The amount of payment or the methodology for determining the payment for
68 a health care service, including but not limited to, cost-of-living increases;

69 (b) The conversion factor for a resource-based relative value scale or similar
70 reimbursement methodology for health care services;

71 (c) The amount of any discount on the price of a health care service;

72 (d) The procedure code or other description of a health care service covered by a
73 payment and the appropriate grouping of the procedure codes;

74 (e) The amount of a bonus related to the provision of health care services or a
75 withholding from the payment due for a health care service; and

76 (f) The amount of any other component of the reimbursement methodology for a
77 health care service.

78 (2) The department of insurance, in consultation with the department of health and
79 senior services, shall have the authority to collect and investigate such information as the
80 department reasonably believes is necessary to determine on an annual basis:

81 (a) The average number of covered lives and geographical distribution of covered
82 lives per quarter per county for every carrier in the state; and

83 (b) The impact of the provisions of this section on average physician fees in the
84 state.

85

86 The department of insurance shall provide such information to the attorney general on an
87 annual basis.

88 **(3) The attorney general shall make the determination of what constitutes**
89 **substantial market power for the purposes of subdivision (1) of this subsection.**

90 **4. The exercise of joint negotiation rights by two or more independent physicians**
91 **who are practicing in the service area of a carrier under this section shall conform to the**
92 **following criteria:**

93 **(1) The physicians may communicate with each other concerning any contractual**
94 **term or condition to be negotiated with the carrier, provided that communications relating**
95 **to fees and fee-related matter shall not commence until a petition for joint negotiation**
96 **under subsection 6 of this section is submitted to and approved by the attorney general;**

97 **(2) The physicians may communicate with the joint negotiation representative**
98 **authorized to negotiate on their behalf with the carrier concerning any contractual term**
99 **or condition;**

100 **(3) The joint negotiation representative shall be the sole party authorized to**
101 **negotiate with the carrier on behalf of the physicians as a group;**

102 **(4) The physicians may, at the option of each physician, agree to be bound by the**
103 **terms and conditions negotiated by the joint negotiation representative; and**

104 **(5) When communicating or negotiating with a joint negotiation representative, a**
105 **carrier may offer different contractual terms or conditions to, or may contract with,**
106 **individual independent physicians.**

107 **5. The provisions of this section shall not apply to a health benefits plan which is**
108 **certified by the director of the department of health and senior services to the attorney**
109 **general as providing covered services exclusively or primarily to persons who are eligible**
110 **for public medical assistance under chapter 208, RSMo.**

111 **6. A person or entity which proposes to act as a joint negotiation representative**
112 **shall satisfy the following requirements:**

113 **(1) Before entering into negotiations with a carrier on behalf of two or more**
114 **independent physicians, the joint negotiation representative shall submit to the attorney**
115 **general for the attorney general's approval under subsection 7 of this section on a form and**
116 **in a manner prescribed by the attorney general a petition which identifies:**

117 **(a) The representative's name and business address;**

118 **(b) The names and business addresses of each physician who will be represented**
119 **by the identified representative;**

120 **(c) The ratio of the physicians requesting joint representation to the total number**
121 **of physicians who are practicing within the geographic service area of the carrier;**

122 **(d) The carrier with which the representative proposes to enter into negotiations**
123 **on behalf of the identified physicians;**

124 (e) The intended subject matter of the proposed negotiations with the identified
125 carrier;

126 (f) The representative's plan of operation and procedures to ensure compliance
127 with the provisions of this section;

128 (g) The anticipated effect of the proposed joint negotiations on the quality and
129 availability of health care among covered persons;

130 (h) The anticipated benefits of a contract between the identified physicians and
131 carrier;

132 (i) Such other data, information, and documents as the petitioners desire to submit
133 in support of their petition; and

134 (j) Such other data, information, and documents as the attorney general deems
135 necessary.

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137 The joint negotiation representative, upon submitting the petition, shall pay a fee to the
138 attorney general in an amount, as determined by the attorney general, which shall be
139 reasonable and necessary to cover the costs associated with carrying out the provisions of
140 this section.

141 (2) After the joint negotiation representative and the carrier identified under
142 subdivision (1) of this subsection have reached an agreement on the contractual terms or
143 conditions that were the subject matter of their negotiations, the joint negotiation
144 representative shall submit to the attorney general for the attorney general's approval in
145 accordance with the provisions of subsection 7 of this section a copy of the proposed
146 contract between the physicians identified under subdivision (1) of this subsection and the
147 carrier, as well as any plan of action which the joint negotiation representative and the
148 carrier may formally agree to for the purpose of implementing the terms and conditions
149 of the contract.

150 (3) Within fourteen days after either party notifies the other party of its decision
151 to decline or terminate negotiations entered into under this section, or after the date that
152 a joint negotiation representative requests that a carrier enter into such negotiations to
153 which request the plan fails to respond, the joint negotiation representative shall report to
154 the attorney general that the negotiations have ended, on a form and in a manner to be
155 prescribed by the attorney general. The joint negotiation representative may resume
156 negotiations with the carrier no later than sixty days after reporting to the attorney general
157 that the negotiations have ended, on the basis of the petition submitted to the attorney
158 general under subdivision (1) of this subsection and approved by the attorney general in
159 accordance with the provisions of subsection 7 of this section. After that date, the joint

160 negotiation representative shall be required to submit a new petition and pay an additional
161 fee to the attorney general under subdivision (1) of this subsection in order to engage in
162 negotiations with the carrier under this section.

163 7. (1) The attorney general shall provide written approval or disapproval of a
164 petition or a proposed contract furnished by a joint negotiation representative under
165 subsection 6 of this section no later than thirty days after receipt of the petition or
166 proposed contract, as applicable. If the attorney general fails to provide written approval
167 or disapproval within this time period, the joint negotiation representative may petition
168 a court of competent jurisdiction for an order to require the attorney general to take such
169 action. For good cause shown, the court may grant the attorney general additional time
170 to approve or disapprove the petition or proposed contract.

171 (2) A joint negotiation representative shall not engage in negotiations with a carrier
172 over any contractual term or condition unless the petition furnished by the joint
173 negotiation representative has been approved in writing by the attorney general, nor shall
174 a proposed contract between two or more independent physicians and a carrier be
175 implemented unless the attorney general has approved the contract.

176 (3) The attorney general shall approve a petition or a proposed contract furnished
177 by a joint negotiation representative under subsection 6 of this section if the attorney
178 general determines that the petition or proposed contract demonstrates that the benefits
179 which are likely to result from the proposed joint negotiations over a contractual term or
180 condition or the proposed contract, as applicable, outweigh the disadvantages attributable
181 to a reduction in competition that may result from the proposed joint negotiations. If the
182 attorney general approves a petition or a proposed contract, the attorney general shall
183 make written findings to this effect. If the attorney general disapproves the petition or the
184 proposed contract, the attorney general shall forward a written explanation of any
185 deficiencies therein to the joint negotiation representative along with a statement of the
186 specific remedial measures by which those deficiencies may be corrected.

187 (4) In making such determination, the attorney general shall consider:

188 (a) Physician distribution by specialty and its effect on competition in the
189 geographic service area of the carrier;

190 (b) The market power of the carrier and the goal of restoring or maintaining
191 competitive balance in the market for health care services;

192 (c) Protections for access to quality patient care; and

193 (d) The potential for the escalation of the cost of providing health care services.

194 (5) The attorney general's written approval of a petition which is furnished by a
195 joint negotiation representative under subsection 6 of this section shall be effective for all

196 subsequent negotiations between the joint negotiation representative and the identified
197 carrier, subject to the provisions of subdivision (3) of subsection 6 of this section.

198 (6) In the case of a petition submitted under subdivision (1) of subsection 6 of this
199 section, the attorney general shall notify the carrier of the petition and provide the carrier
200 with the opportunity to submit written comments within a specified time frame that does
201 not extend beyond the date by which the attorney general is required to act on the petition.

202 8. (1) Within thirty days from the mailing by the attorney general of a notice of
203 disapproval of a petition submitted under subdivision (6) of this subsection, the petitioners
204 may make a written application to the attorney general for a hearing.

205 (2) Upon receipt of a timely written application for a hearing, the attorney general
206 shall schedule and conduct a hearing. The hearing shall be held within thirty days of the
207 application unless the petitioner seeks an extension.

208 (3) The sole parties with respect to any petition under subsection 6 of this section
209 shall be the petitioners, and notwithstanding any other provision of law to the contrary,
210 the attorney general shall not be required to treat any other person as a party and no other
211 person shall be entitled to appeal the attorney general's determination.

212 9. All information, including documents and copies thereof, obtained by or
213 disclosed to the attorney general or any other person in a petition under subsection 6 of this
214 section shall be treated as confidential and proprietary and shall not be made public or
215 otherwise disclosed by the attorney general or any other person without the written consent
216 of the petitioners to whom the information pertains.

217 10. (1) A carrier identified in an application approved by the attorney general
218 under subsection 6 of this section shall not refuse to meet at reasonable times and confer
219 in good faith with a joint negotiation representative authorized to conduct negotiations
220 with the identified carrier, but such obligation does not compel either party to agree to a
221 proposal or require the making of a concession.

222 (2) If a carrier fails to comply with the obligations set forth in subdivision (1) of this
223 subsection, the joint negotiation representative may petition a court of competent
224 jurisdiction for an order to require the carrier to meet at reasonable times and negotiate
225 in good faith. Upon issuance of such an order, the court may require the carrier to pay the
226 costs of the proceedings, including attorneys' fees, incurred by the other party.

227 11. (1) The provisions of this section shall not be construed to:

228 (a) Permit two or more physicians to jointly engage in a coordinated cessation,
229 reduction, or limitation of the health care services which they provide;

230 (b) Permit two or more physicians to meet or communicate in order to jointly
231 negotiate a requirement that at least one of the physicians, as a condition of participation

232 with a carrier, be allowed to participate in all of the products offered by the carrier;

233 (c) Permit two or more physicians to jointly negotiate with a carrier to exclude,
234 limit, or otherwise restrict a nonphysician health care provider from participating in the
235 carrier's health benefits plan based substantially on the fact that the health care provider
236 is not a physician, unless that exclusion, limitation, or restriction is otherwise permitted by
237 law;

238 (d) Prohibit or restrict activity by physicians that is sanctioned under federal or
239 state law or subject such activity to the requirements of this section;

240 (e) Affect governmental approval of, or otherwise restrict activity by, physicians
241 that is not prohibited under federal antitrust law; or

242 (f) Require approval of physician contract terms to the extent that the terms are
243 exempt from state regulation under Section 514(a) of the "Employee Retirement Income
244 Security Act of 1974," P.L. 93-406 (29 U.S.C. Section 1144(a)).

245 (2) Prior to entering into negotiations with a carrier on behalf of two or more
246 independent physicians over a contractual term or condition, a joint negotiation
247 representative shall notify the physicians in writing of the provisions of this section and
248 advise them as to the potential for legal action against physicians who violate federal
249 antitrust law.

250 12. The attorney general, in consultation with the directors of the department of
251 insurance and the department of health and senior services, shall report to the governor
252 and the general assembly no later than August 28, 2008, on the implementation of this
253 section. The report shall include the number of petitions submitted for approval to engage
254 in joint negotiations and the outcome of the petitions and the negotiations, an assessment
255 of the effect the joint negotiations provided for in this section has had in restoring the
256 competitive balance in the market for health care services and in protecting access to
257 quality patient care, an assessment of the impact this section has had on health insurance
258 premiums in the state, and such other information that the attorney general deems
259 appropriate. The report shall also include the attorney general's recommendations as to
260 whether the provisions of this section shall be expanded to include other types of health
261 care professionals and facilities.

262 13. The attorney general, in consultation with the directors of the department of
263 insurance and the department of health and senior services and chapter 536, RSMo, shall
264 promulgate rules to effectuate the purposes of this section. Any rule or portion of a rule,
265 as that term is defined in section 536.010, RSMo, that is created under the authority
266 delegated in this section shall become effective only if it complies with and is subject to all
267 of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This

268 **section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the**
269 **general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or**
270 **to disapprove and annul a rule are subsequently held unconstitutional, then the grant of**
271 **rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be**
272 **invalid and void.**