SPONSOR: Rep. DiPinto

HOUSE OF REPRESENTATIVES

140th GENERAL ASSEMBLY

HOUSE BILL NO.

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE ESTABLISHMENT OF THE PHYSICIAN COLLECTIVE NEGOTIATION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 16 of the Delaware Code by adding thereto a new part designed as "Part XIII", which new part shall read as follows:

"Part XIII.

Physician Collective Negotiation.

Chapter 110. Physician Collective Negotiations Act.

§ 11001. Findings and Policy.

The General Assembly finds that collective negotiation by competing physicians of certain terms and conditions of contracts with health plans will result in pro-competitive effects in the absence of any express or implied threat of retaliatory collective action, such as a boycott or strike, by physicians. Although the General Assembly finds that collective negotiations over fee-related terms may in some circumstances may yield anti-competitive effects, it also recognizes that there are instances in which health plans dominate the market to such a degree that fair negotiations between physicians and the plan 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 General Assembly finds it appropriate and necessary to authorize collective negotiations on fee-related and other issues where it determines that such imbalances exist.

§ 11002. Permitted negotiations.

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) clinical practice guidelines and coverage criteria;

(b) respective physician and health plan liability for the treatment or lack of treatment of health plan enrollees;

(c) administrative procedures including methods and timing of physician payment for services;

(d) dispute resolution procedures relating to disputes between health plans and physicians;

(e) patient referral procedures;

(f) formulation and application of reimbursement methodology;

(g) quality assurance program;

(h) health service utilization review procedures; and

(i) health plan physician selection and termination criteria, or whether to engage in selective contracting.

Nothing herein shall be construed to allow a boycott.

§ 11003. Restrictions on collective bargaining.

Except as provided in § 11004 of this chapter, 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 factor 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; or

(e) 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.

§ 11004. Negotiations of fee-related issues.

Competing physicians within the service area of a health plan may collectively negotiate the terms and conditions specified in subsection 3 where the health plan has substantial market power. Substantial market power will be found where the health plan's market share exceeds 15% within a particular market segment, broken down into the following market segments: Medicare, Medicaid, and commercial, managed care and HMO.

§ 11005. Third Party.

Competing health care physicians' exercise of collective negotiation rights granted by this section 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 the third party who is authorized to negotiated on their behalf with health plans over these contractual terms and conditions;

(c) the third party is the sole party authorized to negotiate with health plans on behalf of the physicians as a group;

(d) physicians can be bound by the terms and conditions negotiated by the third party 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% of the market of practicing physicians for the provision of services or a particular physician type or specialty in the service area or proposed serve area of a health plan with less than 5% of the market, as measured by:

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

(ii) the actual number of consumers of prepaid comprehensive health services; and

(g) the physicians' representative shall comply with the provision of § 11006 of this Chapter.

§ 11006. State oversight.

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

(a) before engaging in any collective negotiation with health plans on behalf of competing physicians, the representative shall file with the Board of Medical Practice 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 physicians, the representative shall furnish for the Board of Medical Practice's approval, a brief report identifying the proposed subject mater of the negotiations or discussions with health plans and the efficiencies expected to be achieved thereby. Approval shall be withheld by the Board of Medical Practice if the proposed negotiations would exceed the authority granted under this section. The representative shall supplement the report to the Board of Medical Practice as new information becomes available that indicates that the subject matter of the negotiations with the health plan has or will change;

(c) within 14 days of a health plan decision declining negotiation, terminating negotiation, or failing to respond to a request for negotiation the representative shall report to the Board of Medical Practice the end of negotiations;

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

§ 11007. Review by the Attorney General.

With the advice of the Attorney General, the Board of Medical Practice shall either approve or disapprove the activity as identified in the report within 30 days of filing. If disapproved the Board of Medical Practice shall furnish a written explanation of any deficiencies along with a statement of specific remedial measures as to how such deficiencies could be corrected. A representative who fails to obtain the Board of Medical Practice's approval is deemed to act outside the authority granted under this Chapter.

§ 11008. Individual negotiation prohibited.

Nothing contained in this Chapter is intended to authorize competing physicians to act in concert in response to a report issued by the physician's representative related to the representative's discussions or negotiations with health plans. The representative of the physicians shall advise physicians of the provisions of this Chapter 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 Chapter.".

SYNOPSIS

This Bill permits collective bargaining negotiation for physicians in this State.