



Senate

General Assembly

File No. 175

February Session, 2000

Substitute Senate Bill No. 482

Senate, March 22, 2000

The Committee on Labor and Public Employees reported through SEN. PRAGUE of the 19th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

An Act Concerning Cooperative Health Care Arrangements.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 (NEW) (a) As used in this section:

2 (1) "Cooperative arrangement" means an agreement among two or
3 more health care providers for the purpose of providing health care
4 services, including, but not limited to, negotiating fees, prices or rates,
5 sharing, allocation or referral of patients, personnel, instructional
6 programs, support services and facilities or medical, diagnostic or
7 laboratory facilities or procedures, and includes a merger, acquisition
8 or joint venture of two or more health care providers, including
9 physician practice groups;

10 (2) "Health care provider" means a state licensed or certified person
11 or facility that delivers any health care service, including any person
12 licensed to practice pharmacy under the provisions of chapter 400j of

13 the general statutes;

14 (3) "Certificate of public advantage" means a certificate issued by the
15 Attorney General authorizing health care providers that are parties to
16 a cooperative arrangement to engage in conduct that could tend to
17 lessen competition in a relevant health care market, upon a showing
18 that such cooperative arrangement meets the criteria set forth in
19 subdivision (2) of subsection (c) of this section; and

20 (4) "Attorney General" means the Attorney General of the state of
21 Connecticut.

22 (b) Any two or more health care providers may apply to the
23 Attorney General for a certificate of public advantage to authorize a
24 cooperative arrangement. The application shall include (1) the name of
25 the applicant or applicants, (2) a description of the nature and scope of
26 the cooperative arrangement, (3) any consideration passing to any
27 party under the agreement, and (4) evidence in support of the criteria
28 described in subdivision (2) of subsection (c) of this section. Each
29 application shall be accompanied by a fee of one hundred dollars. Any
30 information of a proprietary nature submitted in such application that
31 meets the standards set forth in subdivision (5), (8) or (10) of
32 subsection (b) of section 1-210 of the general statutes, as amended by
33 section 1 of public act 99-156, shall be deemed confidential and exempt
34 from public disclosure.

35 (c) (1) The Attorney General shall review each application submitted
36 pursuant to subsection (b) of this section and not later than ninety days
37 following receipt of such application issue a written decision
38 approving or denying the application. The decision shall set forth the
39 Attorney General's findings with regard to the benefits and
40 disadvantages set forth in subdivision (2) of this subsection and a
41 conclusion as to whether the benefits outweigh the disadvantages to
42 the people of this state. The Attorney General may conduct a hearing
43 to obtain information necessary in making such decision.

44 (2) In authorizing a cooperative arrangement under this section, the
45 Attorney General may consider the criteria established in subsection
46 (a) of section 19a-637 of the general statutes that the Attorney General
47 deems relevant to the application for a certificate of public advantage
48 and any benefits of such cooperative arrangement in furthering the
49 goals of health care reform including, but not limited to: (A)
50 Enhancement of the quality of health services to consumers; (B) gains
51 in cost efficiency of health services; (C) improvement in utilization of
52 and access to health services and equipment; and (D) avoidance of
53 duplication of health care resources. The benefits considered by the
54 Attorney General shall outweigh disadvantages including, but not
55 limited to: (i) The potential reduction of competition; (ii) the adverse
56 impact on quality, access or price of health care services to consumers;
57 and (iii) the availability of arrangements to achieve the same benefits
58 that are less restrictive of competition.

59 (3) Cooperative arrangements authorized by the Attorney General
60 in a certificate of public advantage issued pursuant to this section shall
61 be deemed to be conduct taken pursuant to the provisions of the
62 general statutes and in furtherance of the public purposes of this state
63 and are not subject to the provisions of chapter 624 of the general
64 statutes, except that the Attorney General may utilize the powers set
65 forth in section 35-42 of the general statutes. This section shall not be
66 construed to require any health care provider to obtain a certificate of
67 public advantage in order to enter into a cooperative arrangement, and
68 absent approval of such cooperative arrangement by the Attorney
69 General, the legality of such cooperative arrangement shall be
70 determined by applicable antitrust law.

71 (4) Health care providers in a cooperative arrangement authorized
72 pursuant to this section shall submit an annual report accompanied by
73 a fee of one hundred dollars to the Attorney General.

74 (5) The Attorney General shall actively supervise the cooperative

75 arrangements authorized pursuant to this section to determine
76 whether the conduct should continue to be authorized. The Attorney
77 General shall review the conduct through annual progress reports
78 submitted by the health care providers in a cooperative arrangement in
79 accordance with subdivision (4) of this subsection to evaluate whether
80 the conduct is consistent with the application and whether the benefits
81 continue to outweigh the disadvantages. If the Attorney General has
82 reason to believe that the likely benefits no longer outweigh the
83 disadvantages, the Attorney General shall notify the holder of the
84 certificate and hold a hearing to determine whether such certificate
85 should be modified or revoked. Such modification or revocation shall
86 take effect ninety days from the receipt of notice of a final decision by
87 the Attorney General. The Attorney General shall not modify or revoke
88 a certificate of public advantage more than three years after the initial
89 issuance of such certificate.

90 (d) Any person denied a certificate of public advantage by the
91 Attorney General pursuant to this section and any holder of a
92 certificate of public advantage that has been modified or revoked by
93 the Attorney General pursuant to subdivision (5) of subsection (c) of
94 this section may appeal therefrom as if such denial, modification or
95 revocation were a contested case within the meaning of chapter 54 of
96 the general statutes.

97 (e) No managed care organization, as defined in subdivision (2) of
98 section 38a-478 of the general statutes, shall refuse to negotiate in good
99 faith with parties to a cooperative arrangement authorized by the
100 Attorney General. Any managed care organization that violates this
101 section shall be subject to a civil penalty of not more than twenty-five
102 thousand dollars per day, for each violation. The Attorney General
103 may institute proceedings to enforce the provisions of this section in
104 the superior court for the judicial district of Hartford.

105 (f) A violation of subsection (e) of this section shall constitute a

106 violation of chapter 735a of the general statutes.

Statement of Legislative Commissioners:

In the first sentence of subsection (b), the phrase "activities as described in" was deleted for clarity. In the first sentence of subsection (e), the words "parties to" were inserted before "a cooperative arrangement" for clarity.

LAB Committee Vote: Yea 12 Nay 1 JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Cost, Indeterminate Revenue Gain

Affected Agencies: Office of the Attorney General, Department of Consumer Protection

Municipal Impact: None

Explanation

State Impact:

The bill establishes procedures for health care providers to apply to the Office of the Attorney General (AG) for a certificate of public advantage, which authorizes them to form cooperative arrangements. In order to fulfill the AG's responsibilities specified in the bill regarding issuing and supervising certificates, the agency requires \$127,000 in Personal Services and \$6,350 in Other Expenses. This will fund two new positions: one Assistant Attorney General 2 position (\$64,000) and one Principal Health Care Analyst position (\$63,000) to review applications and actively supervise the approved cooperative arrangements. No funding or positions are provided in HB 5217, the Appropriations Act, for the AG's responsibilities under the bill.

Additionally, the bill requires a fee of \$100 to be paid with each application. This is anticipated to result in minimal General Fund revenue.

The bill requires managed care companies to negotiate in good faith with health care providers with a certificate of public advantage. A company that fails to do so faces a daily \$25,000 civil fine and is in violation of the state's Unfair Trade Practices Act. Under the Unfair Trade Practices Act, the Department of Consumer Protection (DCP) has two methods for resolving complaints, 1) formal administrative hearings; or 2) forwarding the complaint to the Attorney General's office for litigation. There may be a minimal workload increase for the DCP or the AG associated with possible complaints, hearings or litigation as a result of this bill. The extent of the additional revenue from the civil fines cannot be determined, as it would depend upon the number and duration of violations that occurred.

OLR Bill Analysis

sSB 482

AN ACT CONCERNING COOPERATIVE HEALTH CARE ARRANGEMENTS.**SUMMARY:**

This bill requires managed care companies to negotiate in good faith with health care providers that have an attorney general-issued certificate of public advantage that allows them to form cooperative arrangements. A company that fails to do so faces a daily \$25,000 civil fine and is in violation of the state's Unfair Trade Practices Act.

The bill allows the attorney general to issue a certificate of public advantage to two or more health care providers, including individuals licensed to practice pharmacy, that submit an application meeting certain requirements to him. The certificate authorizes providers to form cooperative arrangements and engage in conduct that could lessen health care competition.

The bill exempts cooperative arrangements formed under a certificate of public advantage from state antitrust laws. But the bill gives the attorney general the same powers to force parties to produce documents or appear in person that he has when he is investigating whether there has been a state antitrust law violation. It specifies that state antitrust law applies to any cooperative arrangement entered into without an attorney general-approved certificate of public advantage.

The bill specifies the certificate of public advantage application process, attorney general supervision of existing certificates, and the process of modifying or revoking a certificate. It bars the attorney general from modifying or revoking a certificate after the third anniversary of its issuance.

It requires providers that receive a certificate to submit annual reports along with \$100 to the attorney general.

EFFECTIVE DATE: October 1, 2000

COOPERATIVE ARRANGEMENTS

The bill allows providers with a certificate of public advantage to form “cooperative agreements” concerning the provision of health care services. Agreements may concern, among other things, fee, price, and rate negotiation; patient sharing, allocation, or referral; and personnel, instructional programs, support services, and facilities or medical diagnostic, or laboratory facilities or procedures. Agreements may include provider and physician practice group mergers, acquisitions, or joint ventures.

CERTIFICATION APPLICATION PROCESS

The bill allows two or more individuals or facilities that (1) are state-licensed or certified and (2) deliver any health care service to submit an application to the attorney general for a certificate of public advantage that authorizes a cooperative arrangement.

The application costs \$100 and must include:

1. the applicants’ names,
2. a description of their cooperative agreement,
3. an identification of any consideration any party to the agreement is receiving,
4. evidence that supports:
 - (a) the relationship of the application to the state health plan;
 - (b) the relationship of the application to its long-term plan;
 - (c) the application’s financial feasibility;
 - (d) the impact on health care consumers’ interest and health care service payers;

- (e) the application's contribution to health care delivery quality, accessibility, and cost effectiveness in the region;
- (f) whether there is a clear public need for the application;
- (g) whether the health care facility or institution is competent to provide efficient and adequate service to the public;
- (h) that rates are sufficient to allow the health care facility or institution to cover its reasonable capital and overhead costs;
- (i) the relationship of any proposed change to the applicant's current use statistics;
- (j) the applicant's teaching and research responsibilities;
- (k) the applicant's special characteristics of the patient-physician mix;
- (l) the applicant's voluntary efforts to improve productivity and contain costs; and
- (m) any other factors that the Office of Health Care Access deems relevant, including the business interest of all owners, partners, associates, directors, sponsors, stockholders, and operators and the personal background of these individuals.

The bill exempts from the Freedom of Information Act information in an application that is proprietary and concerns:

1. trade secrets, meaning unpatented, secret, commercially valuable plans, appliances, formulas or processes, which are used for the making, preparing, compounding, treating, or processing articles or materials which are trade commodities obtained from a person and which are recognized by law as confidential, and commercial or financial information given in

confidence, not required by law;

2. statements of personal worth or personal financial data that a licensing agency requires and an applicant files to establish his qualification for a license, certificate, or permit; and
3. records, tax returns, reports, and statements that federal or state law exempts or attorney-client privileged communications.

The attorney general must review an application and approve or deny it in writing within 90 days. An applicant may appeal a denial to the Superior Court. The attorney general may hold a hearing to obtain necessary information. His decision must include his findings concerning benefits and disadvantages that the bill allows him to consider. It must state whether the benefits of an application outweighs the disadvantages to Connecticut residents.

The bill allows the attorney general to consider the following when reviewing an application:

1. whether the proposed cooperative agreement furthers the goals of health care reform;
2. whether the agreement will improve the quality of health care for consumers, health care cost efficiency, health services and equipment use and access;
3. whether the agreement will help avoid health care resources duplication;
4. the relationship of the application to the state health plan;
5. the relationship of the application to its long-term plan;
6. the application's financial feasibility;
7. the impact on health care consumers' interest and health care service payers;
8. the application's contribution to health care delivery quality,

- accessibility, and cost-effectiveness in the region;
9. whether there is a clear public need for the application;
 10. whether the health care facility or institution is competent to provide efficient and adequate service to the public;
 11. that rates are sufficient to allow the health care facility or institution to cover its reasonable capital and overhead costs;
 12. the relationship of any proposed change to the applicant's current use statistics;
 13. the applicant's teaching and research responsibilities;
 14. the applicant's special characteristics of the patient-physician mix;
 15. the applicant's voluntary efforts to improve productivity and contain costs; and
 16. any other factors that the Office of Health Care Access deems relevant, including the business interest of all owners, partners, associates, directors, sponsors, stockholders, and operators and the personal background of these individuals.

The bill requires the benefits that the attorney general considers to outweigh the disadvantages, for issues concerning reduction of competition; the adverse impact on quality, access, or health care services costs; and the availability or arrangements to achieve the same benefits that are less restrictive of competition.

ATTORNEY GENERAL SUPERVISION OF CERTIFICATIONS

The bill requires the attorney general to actively supervise cooperative arrangements formed under certificates of public advantage by reviewing annual reports the certificate holders submit to him. He must evaluate whether (1) the holder's conduct is consistent with its application and (2) the benefits continue to outweigh the

disadvantages.

MODIFICATION OR REVOCATION OF CERTIFICATIONS

If the attorney general has reason to believe that the disadvantages of a certificate of public advantage outweigh the benefits he must notify the holder and hold a hearing to determine whether to modify or revoke the certificate. The modification or revocation is effective 90 days after the holder receives notice of the attorney general's final decision. The attorney general may not modify or revoke a certificate after the third anniversary of its issuance. An individual may appeal a contested modification or revocation to the Superior Court.

BACKGROUND

Unfair Trade Practices Act

Under the Unfair Trade Practices Act, the consumer protection commissioner may investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, accept voluntary statements of compliance, and issue regulations defining what constitutes an unfair trade practice. The act also allows individuals to bring suit. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties up to \$5,000 for willful violations and \$25,000 for violating restraining orders.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute
Yea 12 Nay 1