



General Assembly

January Session, 2003

Committee Bill No. 252

LCO No. 4089

Referred to Committee on Public Health

Introduced by:
(PH)

AN ACT CONCERNING COOPERATIVE HEALTH CARE ARRANGEMENTS.

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

1 Section 1. (NEW) (*Effective October 1, 2003*) (a) As used in this
2 section:

3 (1) "Cooperative arrangement" means an agreement among two or
4 more health care providers for the purpose of sharing, allocating or
5 referring patients, personnel, instructional programs, support services
6 or facilities or medical, diagnostic or laboratory facilities or
7 procedures, or negotiating fees, prices or rates with managed care
8 organizations and includes a merger, acquisition or joint venture of
9 two or more health care providers, including physician practice
10 groups;

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

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

21 (4) "Managed care organization" has the same meaning as in section
22 38a-478 of the general statutes.

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

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

46 (2) In reviewing applications under this section, the Attorney

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

62 (3) Actions taken by health care providers in furtherance of a
63 cooperative arrangement that has received a certificate of public
64 advantage shall not be subject to the provisions of chapter 624 of the
65 general statutes, except that the Attorney General may utilize the
66 powers set forth in section 35-42 of the general statutes, when the
67 Attorney General has reason to believe that the approved cooperative
68 arrangement is not performing or providing services as described in
69 the application or in the annual progress report. This section shall not
70 be construed to require any health care provider to obtain a certificate
71 of public advantage in order to enter into a cooperative arrangement,
72 and, absent a certificate of public advantage, the legality of such
73 cooperative arrangement shall be determined by applicable antitrust
74 law.

75 (4) Health care providers in a cooperative arrangement that has
76 received a certificate of public advantage pursuant to this section shall
77 submit an annual progress report to the Attorney General on a form
78 prescribed by the Attorney General. Such report shall be accompanied
79 by a fee of one hundred dollars.

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

98 (d) Any health care provider denied a certificate of public advantage
99 by the Attorney General pursuant to this section and any holder of a
100 certificate of public advantage that has been modified or revoked by
101 the Attorney General pursuant to subdivision (5) of subsection (c) of
102 this section may appeal therefrom as if such denial, modification or
103 revocation were a contested case within the meaning of chapter 54 of
104 the general statutes.

105 (e) No managed care organization shall refuse to negotiate in good
106 faith with parties to a cooperative arrangement authorized by the
107 Attorney General. Any managed care organization that violates this
108 section shall be subject to a civil penalty of not more than twenty-five
109 thousand dollars per day, for each violation. The Attorney General
110 may institute proceedings to enforce the provisions of this section in
111 the superior court for the judicial district of Hartford.

112 (f) A violation of subsection (e) of this section shall constitute a
113 violation of chapter 735a of the general statutes.

This act shall take effect as follows:	
Section 1	October 1, 2003

Statement of Purpose:

To allow health care providers to enter into cooperative agreements not subject to antitrust laws, and to require managed care organizations to negotiate in good faith with such providers.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

Co-Sponsors: SEN. PETERS, 20th Dist.; SEN. PRAGUE, 19th Dist.

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