



Senate

General Assembly

February Session, 2006

File No. 323

Senate Bill No. 28

Senate, April 4, 2006

The Committee on Public Health reported through SEN. MURPHY of the 16th Dist., Chairperson of the Committee on the part of the Senate, that the 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 Section 1. (NEW) (*Effective October 1, 2006*) (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, but is not limited to, a merger, acquisition
9 or joint venture of two or more health care providers, including, but
10 not limited to, physician practice groups;

11 (2) "Health care provider" means a state licensed or certified person
12 or facility that delivers any health care service, including, but not
13 limited to, a person licensed to practice pharmacy under the provisions

14 of chapter 400j of 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 meaning set forth in section
22 38a-478 of the 2006 supplement to the general statutes.

23 (b) The Attorney General may issue a certificate of public advantage
24 in accordance with this section. Any two or more health care providers
25 may apply to the Attorney General for a certificate of public advantage
26 to authorize a cooperative arrangement. The application shall include
27 (1) the name of the applicant or applicants, (2) a description of the
28 nature and scope of the cooperative arrangement, (3) a description of
29 any consideration passing to a party under the agreement, (4) evidence
30 in support of the criteria set forth in subdivision (2) of subsection (c) of
31 this section, and (5) such other information as the Attorney General
32 may require. Each application shall be accompanied by a fee of one
33 hundred dollars. Any information of a proprietary nature submitted in
34 such application that meets the standards set forth in subdivision (5),
35 (8) or (10) of subsection (b) of section 1-210 of the 2006 supplement to
36 the general statutes shall be confidential and exempt from public
37 disclosure.

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

47 information necessary in making such decision.

48 (2) In reviewing applications under this section, the Attorney
49 General shall consider the criteria established in subsection (a) of
50 section 19a-637 of the 2006 supplement to the general statutes that the
51 Attorney General deems relevant to the application for a certificate of
52 public advantage and any benefits of such cooperative arrangement
53 including, but not limited to: (A) Enhancement of the quality of health
54 services to consumers; (B) gains in cost efficiency of providing health
55 services; (C) improvement in utilization of and access to health services
56 and equipment; and (D) avoidance of duplication of health care
57 resources. The Attorney General shall not approve an application for a
58 certificate of public advantage unless the Attorney General finds that
59 the benefits of the proposed cooperative arrangement outweigh the
60 disadvantages including, but not limited to: (i) The potential reduction
61 in competition; (ii) the adverse impact on quality, access or price of
62 health care services to consumers; and (iii) the availability of
63 arrangements that achieve the same benefits with less restriction on
64 competition.

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

77 (4) Health care providers in a cooperative arrangement that has
78 received a certificate of public advantage pursuant to this section shall
79 submit an annual progress report to the Attorney General on a form

80 prescribed by the Attorney General. The report shall be accompanied
81 by a fee of one hundred dollars.

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

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

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

113 superior court for the judicial district of Hartford.

114 (f) A violation of subsection (e) of this section shall be deemed an
115 unfair or deceptive trade practice under chapter 735a of the general
116 statutes.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>October 1, 2006</i>	New section
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LAB *Joint Favorable C/R*

PH

PH *Joint Favorable*

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:

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Attorney General	GF - Cost	Potential	Potential
Attorney General; Consumer Protection, Dept.	Various Funds - Revenue Gain	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill establishes an antitrust exemption that the Attorney General may grant to health care providers who negotiate collectively with health plans on matters for reimbursement. It requires the Attorney General to actively supervise any such cooperative arrangements. The Office of the Attorney General (OAG) would incur costs, estimated to be \$50,000, to pay for antitrust expertise to review the market impact and health care benefits of any such arrangement proposed under the bill and approximately \$15,000 annually to maintain active supervision of the arrangement. Depending upon the number of arrangements certified, the OAG may also require additional staffing to coordinate and oversee them on an on-going basis.

The bill also makes it an unfair trade practice for managed care organizations to refuse to negotiate in good faith with parties to a cooperative arrangement authorized by the Attorney General. Under the Connecticut Unfair Trade Practices Act (CUTPA), the Department of Consumer Protection (DCP) and the Attorney General can impose CUTPA fines.

In the case of settlements, depending on the negotiation terms, funds are either deposited into the DCP's Consumer Protection Settlement Account or the unrestricted resources of the General Fund.

Funds deposited into the Consumer Protection Settlement Account are used only to enhance activities that further consumer protection. In FY 05, \$92,298 in CUTPA fines were deposited into the DCP Consumer Protection Settlement Account. Additionally, in FY 05, \$356,751 in CUTPA fines were deposited into the General Fund as a result of settlements negotiated by the Office of the Attorney General. The state agencies could accommodate the workload associated with enforcement of the bill without requiring additional resources. To the extent that the bill increases the potential for future violations, the bill could result in a minimal revenue gain to the state.

The Out Years

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$	FY 11 \$
Attorney General	GF - Cost	Potential	Potential	Potential
Attorney General; Consumer Protection, Dept.	Various Funds - Revenue Gain	Potential Minimal	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

OLR Bill Analysis**SB 28*****AN ACT CONCERNING COOPERATIVE HEALTH CARE ARRANGEMENTS.*****SUMMARY:**

This bill authorizes the attorney general to issue a certificate of public advantage authorizing cooperative agreements to health care providers that apply and meet certain requirements. To approve an application, the attorney general must find the benefits of the cooperative arrangement outweigh the costs, which could include the lessening of health care competition.

The bill requires managed care companies to negotiate in good faith with health care providers that have a certificate of public advantage. A company that fails to do so (1) faces a daily \$25,000 civil fine for each violation and (2) violates the state's Unfair Trade Practices Act.

The bill exempts cooperative arrangements formed under such certificates from state antitrust laws, other than the one that allows the attorney general to force parties to produce documents or appear in person when he is investigating a possible state antitrust law violation. It allows providers to enter into cooperative agreements without getting a certificate, but their legality is determined by state anti-trust law.

The bill specifies (1) the certificate application process, which includes a \$100 fee; (2) attorney general supervision of existing certificates; and (3) 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. Certificate holders must submit annual progress reports along with \$100 to the attorney general.

EFFECTIVE DATE: October 1, 2006

§ 1(a) — COOPERATIVE ARRANGEMENTS

Under the bill, cooperative agreements can address, among other things: (1) fee, price, and rate negotiation; (2) patient sharing, allocation, or referral; (3) personnel, instructional programs, support services, and facilities; or (4) medical diagnostic or laboratory facilities or procedures. Agreements may include provider and physician practice group mergers, acquisitions, or joint ventures.

§ 1(b) & (c) — 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.

The application costs \$100 and must include:

1. the applicants' names and a description of their cooperative arrangement,
2. an identification of any consideration any party to the agreement is receiving,
3. any other information the attorney general requests, and
4. evidence that supports:
 - a) the relationship of the application to the state health plan and long-term plan;
 - b) the application's financial feasibility;
 - c) the application's impact on health care consumers' and health care service payers' interest and its contribution to health care delivery quality, accessibility, and cost effectiveness;
 - d) whether there is a clear public need for the application;

- e) whether the health care facility or institution is competent to provide efficient and adequate service to the public;
- f) whether rates are sufficient to allow the health care facility or institution to cover its reasonable capital and overhead costs;
- g) the relationship of any proposed change to the applicant's current use statistics;
- h) the applicant's teaching and research responsibilities, special characteristics of its patient-physician mix, and any voluntary efforts to improve productivity and contain costs; and
- i) any other factors the Office of Health Care Access considers relevant, including the business interest and personal background of all owners, partners, associates, directors, sponsors, stockholders, and operators.

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

1. trade secrets, meaning information that is valuable, at least in part, because it is not generally known to others;
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 communication.

The attorney general must review an application and approve or deny it in writing within 90 days after he receives it. He may hold a hearing to obtain necessary information.

He may 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, and avoid resource duplication;
3. the relationship of the application to the state health plan and long-term plan;
4. the application's financial feasibility;
5. the impact on health care consumers' and health care service payers' interest;
6. the application's contribution to health care delivery, quality, accessibility, and cost-effectiveness;
7. other required elements of the application, including public need for it, applicant competency, rate sufficiency to cover costs, teaching and research responsibilities, and applicants voluntary effort to improve productivity and contain costs; and
8. any other factors that the Office of Health Care Access considers relevant, including the business interest and personal background of all owners, partners, associates, directors, sponsors, stockholders, and operators.

The attorney general's decision must include his findings concerning the benefits and disadvantages that the bill allows him to consider. It must state whether the benefits of an application outweigh the disadvantages to Connecticut residents.

He may not approve an application unless he finds that the benefits outweigh the disadvantages, including: (1) potential reduction of competition; (2) the adverse impact on quality, access, or health care services costs; and (3) the availability or arrangements to achieve the same benefits that are less restrictive of competition.

An applicant may appeal a denial to Superior Court.

§ 1(c)(5) — 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 progress reports the certificate holders submit to him. The reports must be on a form he prescribes. He must evaluate whether (1) the holder's conduct is consistent with its application and (2) the benefits continue to outweigh the disadvantages.

§ 1(c) & (d) — 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. An individual may appeal a contested modification or revocation to Superior Court. The attorney general may not modify or revoke a certificate after the third anniversary of its issuance.

BACKGROUND

Unfair Trade Practices Act

Under the state 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 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.

Federal Antitrust Law

Generally, federal antitrust laws apply to the health care industry. The state action immunity doctrine provides antitrust immunity in certain situations that would otherwise be actionable under the antitrust laws. In order to invoke the state action immunity doctrine, a private entity must be acting pursuant to a clearly articulated state policy and its conduct must be actively supervised by the state (*Federal Trade Commission v. Ticor Title Insurance Company*, 504 U.S. 621 (1992)).

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Change of Reference

Yea 10 Nay 2 (02/23/2006)

Public Health Committee

Joint Favorable

Yea 20 Nay 3 (03/17/2006)