



*Connecticut Business & Industry Association*

TESTIMONY OF  
ERIC GEORGE  
CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION  
BEFORE THE  
JUDICIARY COMMITTEE  
LEGISLATIVE OFFICE BUILDING  
MARCH 24, 2006

My name is Eric George and I am Associate Counsel for the Connecticut Business & Industry Association (CBIA). CBIA represents approximately 10,000 businesses throughout Connecticut, the vast majority of which are small companies employing fewer than 50 people.

I am here to oppose **SB 670 AAC Cooperative Health Care Arrangements and Standards in Contracts between Health Insurers and Health Care Providers**. This bill would: (i) enable independent, competing health care providers to act collectively to fix their fees with health plans, whether these health plans are sponsored by insurance companies or by self-insured employers or labor groups (providing both the means and the incentive for health care providers to increase their prices to the detriment of patients and consumers); and (ii) dictate contract provisions concerning unilateral contracts, payment methodologies, time periods for payments, information related to payment calculation, dispute processes and fee schedules in the agreements between health insurance carriers and practitioners.

**Doctor's Antitrust Exemption.**

Section 1 of SB 462 would create a new exemption from state antitrust laws for health care practitioners. Connecticut's antitrust statutes are the bedrock of our consumer protection laws. These laws prohibit price fixing and similar agreements and arrangements that reduce competition in the marketplace and exploit consumers. SB 670 would fundamentally change current antitrust laws and allow medical providers to operate outside of Connecticut's antitrust restrictions.

Because antitrust laws are so fundamental to protecting consumers, exemptions to the laws are very limited. Such exemptions include: (a) bona fide organizations of employees; and (b) the promotion of legitimate labor interests. However, SB 670 would exempt from antitrust laws independent, competing contractors – not employees. And it would exempt individual entrepreneurial interests – not labor interests. It would allow some independent contractors – doctors and other health care providers – to collectively exert economic pressure on health plans to gain higher fees. SB 670 promotes one sector of the health care system – health care providers – at the cost of health care consumers.

It is inappropriate to create a new exemption under the antitrust laws for health care professionals. In fact, their recent economic history indicates that health care providers are already calling the shots in negotiations with health plans. In a January 2004 Issue Brief published by The Center for Studying Health System Change, the authors make these observations about health care providers negotiating power:

A number of forces converged in the late 1990s to give certain providers . . . significant bargaining leverage over health plans. By 2000, many providers were pushing plans for large payment rate increases and more favorable contract terms . . . to recover ground previously lost to health plans . . . Providers' negotiating success emboldened other providers to push back . . . In 2002-03, . . . plans accommodated providers' demands to avoid the negative consequences of bitter and protracted disputes. The lull in showdowns reflects, in part a *growing recognition by plans that the balance of power now clearly favors providers* [emphasis added].

Indeed, most health care analysts identify this growing bargaining power of health care providers as a major driver behind escalating health care costs. If anything, the data suggests that there needs to be greater antitrust scrutiny of health care providers – not less.

Also, physicians and other health care professionals do not need an exception to the antitrust laws to negotiate with health plans; there is already an available mechanism for collectively negotiating fees with health care plans. As explained in the 1996 Health Care Antitrust Guidelines issued by the Department of Justice and the Federal Trade Commission, current antitrust laws allow providers to organize networks and joint

ventures through independent practice associations (IPAs), and these IPAs can negotiate, contract, or compete directly, with health plans. Also, current antitrust laws do not prevent providers from collectively discussing with health plans issues involving legitimate quality-of-care concerns -- as long as they do not involve collective activity that limits consumer choices. And the Guidelines permit provider discussions, with each other and with health plans, of clinical issues and regarding the impact of managed care on the quality of care – as long as they do not involve boycotts or efforts to coerce others.

Not only do we oppose creating a new exception to antitrust laws that would allow health care professionals to collectively fix prices, we also object to the scheme that allows this exception as outlined in SB 670. Ostensibly, the scheme is supposed to substitute for the consumer protections provided in current antitrust laws. But the “consumer protections” in the bill boil down to taking an existing enforcement agency – the Office of the Attorney General – and grafting on some licensing functions. The bill gives the Office the power to unilaterally sanction and supervise price fixing without providing it with a regulatory framework or resources.

Also, while providers can appeal AG decisions, there is no such appeal right for consumers. In fact, while SB 670 takes away the consumer protections of the antitrust laws, consumers have no rights under SB 670. But then, this is not a consumer-protection bill, but a provider-protection bill.

By creating an exception to antitrust laws for health care providers, SB 670 removes the fundamental and essential consumer protections contained in those laws. It protects health care providers at the cost of health care consumers. As noted by the Assistant Attorney General, Antitrust Division of the U.S. Department of Justice in opposing such exceptions at the federal level:

Our investigations reveal that when health care professionals jointly negotiate with health insurers, without regard to antitrust laws, *they typically seek to significantly increase their fees, sometimes by as much as 20-40%*. . . Providers have their own self-interests, and our enforcement actions and other experience suggest that their actions may not be congruent with the interests of consumers [emphasis added]. (Testimony before the House Judiciary Committee, June 22, 1999).

### **Standards in Contracts.**

While Section 2 of SB 670 concerning standards in contracts between physicians and insurance carriers has been scaled back from versions from previous years, we remain concerned that SB 670 could ultimately have the result of advancing the interests of health care practitioners at the cost of health care patients and consumers. This would have implications for both workers' compensation costs and health care costs. We are concerned that SB 670 advances the interests of one independent contracting party in the health care system over another in that it dictates the provisions that must be included in, and excluded from, contracts between health plans and health care providers. Thus, SB 670 creates a situation where state statute usurps the will of private parties in determining contract terms and provisions, inappropriately intruding into the health care system.

I urge you to reject SB 670, and thank you for considering my comments.