



Quality is Our Bottom Line

**Judiciary Committee
Public Hearing
Friday, March 4, 2011**

**Connecticut Association of Health Plans
Testimony in Opposition to**

**H.B. No. 6343 (RAISED) AN ACT CONCERNING COOPERATIVE HEALTH
CARE ARRANGEMENTS**

The Connecticut Association of Health Plans respectfully offers testimony in opposition to HB 6343 AAC Cooperative Health Care Arrangements.

The bill before you would establish an antitrust exemption, granted by the Attorney General, for providers to negotiate collectively with health plans on matters of reimbursement. We oppose this concept on the basis that it is anti-competitive and amounts to what some would say is price-fixing. Federal and state antitrust laws protect consumers by prohibiting this very type of behavior.

The Federal Trade Commission and the Department of Justice – Antitrust Division have spoken out strongly against proposals like these in recent years warning that they call for an unprecedented departure from federal antitrust laws and if enacted, would create problems, including higher costs and reduced access to care, that would be more serious than the problems they are intended to solve. In previous years testimony from Art Lerner who prior to entering private practice, practiced antitrust law with the Federal Trade Commission for 9 years stated,

“An antitrust exemption for agreements and combinations by health care providers on the prices and other terms of dealing they will accept would not serve consumers’ or patients’ interests. It would risk significantly higher costs for health benefit plans and their enrollees.”

There is also a recent letter signed by the FTC heads of the Health Care Office, Bureau of Competition and Offices of Policy Planning in response to similar legislation considered in Alaska. The letter explicitly states in a detailed manner why such legislation would likely harm consumers and not improve the quality of care. Further, it takes a fairly aggressive approach in suggesting that the proposed legislation would fail to satisfy the active supervision prong of the state action exemption. Testimony submitted by the US

Department of Justice in D.C. at yet another hearing on a proposal of this nature states that “when health care professionals jointly negotiate with health insurers, without regard to antitrust laws, they typically seek to significantly increase their fees, sometime by as much as 20 to 40%.”

Under existing law, physicians can and do form legitimate joint ventures and multi-provider networks to gain leverage and negotiating strength with managed care organizations. The Connecticut State Medical Society operates one of the largest independent practice associations (IPAs) in the state and negotiates price and other contract terms routinely on behalf of its 8,000 members. The American Medical Association estimates that physicians have formed more than 4,000 IPAs nationwide. In addition, physicians also negotiate with managed care organizations through more than 19,000 group practices and more than 700 physician hospital organizations. In other words, an antitrust exemption is not needed to allow physicians and other health care professionals to form networks and other kinds of legitimate joint ventures to contract, or compete directly, with health plans.

In addition, antitrust exemptions risk permitting more powerful professions to negotiate for terms that effectively exclude or limit less powerful health care professionals. Physicians could, for example, demand terms that limit the ability of nurse midwives, advanced practice nurses, optometrists and other non-physician providers to treat patients in health plans and receive fair compensation. This, in turn, could deny consumers choice in the selection of their providers.

By permitting health care providers to collude in negotiating favorable contract provisions, an antitrust exemption would enable providers collectively to refuse to cooperate in reporting on health care quality measures or refuse to be held accountable for the health care services they deliver. Consider the havoc if a large group of providers chose to boycott a certain health plan.

Consumers, employers, health plans and providers need the protections of the antitrust laws. They do not need to be protected from the antitrust laws. We urge your rejection of HB 6343.