

5204--A

2009-2010 Regular Sessions

I N   S E N A T E

April 27, 2009

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Introduced by Sens. BRESLIN, LANZA, MONTGOMERY, OPPENHEIMER, PADAVAN, PARKER, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to requirements for collective negotiations by health care providers with certain health benefit plans

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Statement of legislative intent. The legislature finds that  
2     collective negotiation by competing health care providers for the terms  
3     and conditions of contracts with health plans can result in beneficial  
4     results for health care consumers. The legislature further finds  
5     instances where health plans dominate the market to such a degree that  
6     fair and adequate negotiations between health care providers and the  
7     plans are adversely affected, so that it is necessary and appropriate to  
8     provide for a system of collective action on behalf of health care  
9     providers. Consequently, the legislature finds it appropriate and necessary  
10    to displace competition with regulation of health plan-provider  
11    agreements and authorize collective negotiations on the terms and conditions  
12    of the relationship between health care plans and health care  
13    providers so the imbalances between the two will not result in adverse  
14    conditions of health care. This act is not intended to apply to or  
15    affect in any respect collective bargaining relationships involving  
16    health care providers as defined in section 4920 of the public health  
17    law or rights relating to collective bargaining arising under applicable  
18    federal or state collective bargaining statutes.  
19    S 2. This act shall be known and may be cited as the "health care  
20    consumer and provider protection act".

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD11608-02-0

1 S 3. Article 49 of the public health law is amended by adding a new  
2 title III to read as follows:

3 TITLE III  
4 COLLECTIVE NEGOTIATIONS BY HEALTH CARE  
5 PROVIDERS WITH HEALTH CARE PLANS

6 SECTION 4920. DEFINITIONS.

7 4921. NON-FEE RELATED COLLECTIVE NEGOTIATION AUTHORIZED.

8 4922. FEE RELATED COLLECTIVE NEGOTIATION.

9 4923. COLLECTIVE NEGOTIATION REQUIREMENTS.

10 4924. REQUIREMENTS FOR HEALTH CARE PROVIDERS' REPRESENTATIVE.

11 4925. CERTAIN COLLECTIVE ACTION PROHIBITED.

12 4926. FEES.

13 4927. MONITORING OF AGREEMENTS.

14 4928. CONFIDENTIALITY.

15 4929. SEVERABILITY AND CONSTRUCTION.

16 S 4920. DEFINITIONS. FOR PURPOSES OF THIS TITLE:

17 1. "HEALTH CARE PLAN" MEANS AN ENTITY (OTHER THAN A HEALTH CARE  
18 PROVIDER) THAT APPROVES, PROVIDES, ARRANGES FOR, OR PAYS FOR HEALTH CARE  
19 SERVICES, INCLUDING BUT NOT LIMITED TO:

20 (A) A HEALTH MAINTENANCE ORGANIZATION LICENSED PURSUANT TO ARTICLE  
21 FORTY-THREE OF THE INSURANCE LAW OR CERTIFIED PURSUANT TO ARTICLE  
22 FORTY-FOUR OF THIS CHAPTER;

23 (B) ANY OTHER ORGANIZATION CERTIFIED PURSUANT TO ARTICLE FORTY-FOUR OF  
24 THIS CHAPTER; OR

25 (C) AN INSURER OR CORPORATION SUBJECT TO THE INSURANCE LAW.

26 2. "PERSON" MEANS AN INDIVIDUAL, ASSOCIATION, CORPORATION, OR ANY  
27 OTHER LEGAL ENTITY.

28 3. "HEALTH CARE PROVIDERS' REPRESENTATIVE" MEANS A THIRD PARTY WHO IS  
29 AUTHORIZED BY HEALTH CARE PROVIDERS TO NEGOTIATE ON THEIR BEHALF WITH  
30 HEALTH CARE PLANS OVER CONTRACTUAL TERMS AND CONDITIONS AFFECTING THOSE  
31 HEALTH CARE PROVIDERS.

32 4. "STRIKE" MEANS A WORK STOPPAGE IN PART OR IN WHOLE, DIRECT OR INDI-  
33 RECT, BY A BODY OF WORKERS TO GAIN COMPLIANCE WITH DEMANDS MADE ON AN  
34 EMPLOYER.

35 5. "SUBSTANTIAL MARKET SHARE IN A BUSINESS LINE" EXISTS IF A HEALTH  
36 CARE PLAN'S MARKET SHARE OF A BUSINESS LINE WITHIN A SERVICE AREA AS  
37 APPROVED BY THE ATTORNEY GENERAL, ALONE OR IN COMBINATION WITH THE  
38 MARKET SHARES OF AFFILIATES, EXCEEDS EITHER TEN PERCENT OF THE TOTAL  
39 NUMBER OF COVERED LIVES IN THAT SERVICE AREA FOR SUCH BUSINESS LINE OR  
40 TWENTY-FIVE THOUSAND LIVES, OR IF THE ATTORNEY GENERAL DETERMINES THE  
41 MARKET SHARE OF THE INSURER IN THE RELEVANT INSURANCE PRODUCT AND  
42 GEOGRAPHIC MARKETS FOR THE SERVICES OF THE PROVIDERS SEEKING TO COLLEC-  
43 TIVELY NEGOTIATE SIGNIFICANTLY EXCEEDS THE COUNTERVAILING MARKET SHARE  
44 OF THE PROVIDERS ACTING INDIVIDUALLY.

45 6. "HEALTH CARE PROVIDER" MEANS A PERSON WHO IS LICENSED, CERTIFIED,  
46 OR REGISTERED PURSUANT TO TITLE EIGHT OF THE EDUCATION LAW AND WHO PRAC-  
47 TICES AS A HEALTH CARE PROVIDER AS AN INDEPENDENT CONTRACTOR AND/OR WHO  
48 IS AN OWNER, OFFICER, SHAREHOLDER, OR PROPRIETOR OF A HEALTH CARE  
49 PROVIDER. A HEALTH CARE PROVIDER UNDER TITLE EIGHT OF THE EDUCATION LAW  
50 WHO PRACTICES AS AN EMPLOYEE OF A HEALTH CARE PROVIDER SHALL NOT BE  
51 DEEMED A HEALTH CARE PROVIDER FOR PURPOSES OF THIS TITLE.

52 S 4921. NON-FEE RELATED COLLECTIVE NEGOTIATION AUTHORIZED. 1. HEALTH  
53 CARE PROVIDERS PRACTICING WITHIN THE SERVICE AREA OF A HEALTH CARE PLAN  
54 MAY MEET AND COMMUNICATE FOR THE PURPOSE OF COLLECTIVELY NEGOTIATING THE  
55 FOLLOWING TERMS AND CONDITIONS OF PROVIDER CONTRACTS WITH THE HEALTH  
56 CARE PLAN:

1 (A) THE DETAILS OF THE UTILIZATION REVIEW PLAN AS DEFINED PURSUANT TO  
2 SUBDIVISION TEN OF SECTION FORTY-NINE HUNDRED OF THIS ARTICLE AND  
3 SUBSECTION (J) OF SECTION FOUR THOUSAND NINE HUNDRED OF THE INSURANCE  
4 LAW;

5 (B) COVERAGE PROVISIONS; HEALTH CARE BENEFITS; BENEFIT MAXIMUMS,  
6 INCLUDING BENEFIT LIMITATIONS; AND EXCLUSIONS OF COVERAGE;

7 (C) THE DEFINITION OF MEDICAL NECESSITY;

8 (D) THE CLINICAL PRACTICE GUIDELINES USED TO MAKE MEDICAL NECESSITY  
9 AND UTILIZATION REVIEW DETERMINATIONS;

10 (E) PREVENTIVE CARE AND OTHER MEDICAL MANAGEMENT PRACTICES;

11 (F) DRUG FORMULARIES AND STANDARDS AND PROCEDURES FOR PRESCRIBING  
12 OFF-FORMULARY DRUGS;

13 (G) RESPECTIVE PHYSICIAN LIABILITY FOR THE TREATMENT OR LACK OF TREAT-  
14 MENT OF COVERED PERSONS;

15 (H) THE DETAILS OF HEALTH CARE PLAN RISK TRANSFER ARRANGEMENTS WITH  
16 PROVIDERS;

17 (I) PLAN ADMINISTRATIVE PROCEDURES, INCLUDING METHODS AND TIMING OF  
18 HEALTH CARE PROVIDER PAYMENT FOR SERVICES;

19 (J) PROCEDURES TO BE UTILIZED TO RESOLVE DISPUTES BETWEEN THE HEALTH  
20 CARE PLAN AND HEALTH CARE PROVIDERS;

21 (K) PATIENT REFERRAL PROCEDURES INCLUDING, BUT NOT LIMITED TO, THOSE  
22 APPLICABLE TO OUT-OF-POCKET NETWORK REFERRALS;

23 (L) THE FORMULATION AND APPLICATION OF HEALTH CARE PROVIDER REIMBURSE-  
24 MENT PROCEDURES;

25 (M) QUALITY ASSURANCE PROGRAMS;

26 (N) THE PROCESS FOR RENDERING UTILIZATION REVIEW DETERMINATIONS  
27 INCLUDING: ESTABLISHMENT OF A PROCESS FOR RENDERING UTILIZATION REVIEW  
28 DETERMINATIONS WHICH SHALL, AT A MINIMUM, INCLUDE: WRITTEN PROCEDURES TO  
29 ASSURE THAT UTILIZATION REVIEWS AND DETERMINATIONS ARE CONDUCTED WITHIN  
30 THE TIMEFRAMES ESTABLISHED IN THIS ARTICLE; PROCEDURES TO NOTIFY AN  
31 ENROLLEE, AN ENROLLEE'S DESIGNEE AND/OR AN ENROLLEE'S HEALTH CARE  
32 PROVIDER OF ADVERSE DETERMINATIONS; AND PROCEDURES FOR APPEAL OF ADVERSE  
33 DETERMINATIONS, INCLUDING THE ESTABLISHMENT OF AN EXPEDITED APPEALS  
34 PROCESS FOR DENIALS OF CONTINUED INPATIENT CARE OR WHERE THERE IS IMMI-  
35 NENT OR SERIOUS THREAT TO THE HEALTH OF THE ENROLLEE; AND

36 (O) HEALTH CARE PROVIDER SELECTION AND TERMINATION CRITERIA USED BY  
37 THE HEALTH CARE PLAN.

38 2. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ALLOW OR AUTHORIZE AN  
39 ALTERATION OF THE TERMS OF THE INTERNAL AND EXTERNAL REVIEW PROCEDURES  
40 SET FORTH IN LAW.

41 3. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ALLOW A STRIKE OF A  
42 HEALTH CARE PLAN BY HEALTH CARE PROVIDERS OR PLANS AS OTHERWISE SET  
43 FORTH IN THE LAWS OF THIS STATE.

44 4. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ALLOW OR AUTHORIZE  
45 TERMS OR CONDITIONS WHICH WOULD IMPEDE THE ABILITY OF A HEALTH CARE PLAN  
46 TO OBTAIN OR RETAIN ACCREDITATION BY THE NATIONAL COMMITTEE FOR QUALITY  
47 ASSURANCE OR A SIMILAR BODY.

48 S 4922. FEE RELATED COLLECTIVE NEGOTIATION. 1. IF THE HEALTH CARE PLAN  
49 HAS SUBSTANTIAL MARKET SHARE IN A BUSINESS LINE IN ANY SERVICE AREA,  
50 HEALTH CARE PROVIDERS PRACTICING WITHIN THAT SERVICE AREA MAY COLLEC-  
51 TIVELY NEGOTIATE THE FOLLOWING TERMS AND CONDITIONS RELATING TO THAT  
52 BUSINESS LINE WITH THE HEALTH CARE PLAN:

53 (A) THE FEES ASSESSED BY THE HEALTH CARE PLAN FOR SERVICES, INCLUDING  
54 FEES ESTABLISHED THROUGH THE APPLICATION OF REIMBURSEMENT PROCEDURES;

55 (B) THE CONVERSION FACTORS USED BY THE HEALTH CARE PLAN IN A  
56 RESOURCE-BASED RELATIVE VALUE SCALE REIMBURSEMENT METHODOLOGY OR OTHER

1 SIMILAR METHODOLOGY; PROVIDED THE SAME ARE NOT OTHERWISE ESTABLISHED BY  
2 STATE OR FEDERAL LAW OR REGULATION;

3 (C) THE AMOUNT OF ANY DISCOUNT GRANTED BY THE HEALTH CARE PLAN ON THE  
4 FEE OF HEALTH CARE SERVICES TO BE RENDERED BY HEALTH CARE PROVIDERS;

5 (D) THE DOLLAR AMOUNT OF CAPITATION OR FIXED PAYMENT FOR HEALTH  
6 SERVICES RENDERED BY HEALTH CARE PROVIDERS TO HEALTH CARE PLAN ENROL-  
7 LEES;

8 (E) THE PROCEDURE CODE OR OTHER DESCRIPTION OF A HEALTH CARE SERVICE  
9 COVERED BY A PAYMENT AND THE APPROPRIATE GROUPING OF THE PROCEDURE  
10 CODES; OR

11 (F) THE AMOUNT OF ANY OTHER COMPONENT OF THE REIMBURSEMENT METHODOLOGY  
12 FOR A HEALTH CARE SERVICE.

13 2. NOTHING HEREIN SHALL BE DEEMED TO AFFECT OR LIMIT THE RIGHT OF A  
14 HEALTH CARE PROVIDER OR GROUP OF HEALTH CARE PROVIDERS TO COLLECTIVELY  
15 PETITION A GOVERNMENT ENTITY FOR A CHANGE IN A LAW, RULE, OR REGULATION.

16 S 4923. COLLECTIVE NEGOTIATION REQUIREMENTS. 1. COLLECTIVE NEGOTIATION  
17 RIGHTS GRANTED BY THIS TITLE MUST CONFORM TO THE FOLLOWING REQUIREMENTS:

18 (A) HEALTH CARE PROVIDERS MAY COMMUNICATE WITH OTHER HEALTH CARE  
19 PROVIDERS REGARDING THE CONTRACTUAL TERMS AND CONDITIONS TO BE NEGOTI-  
20 ATED WITH A HEALTH CARE PLAN;

21 (B) HEALTH CARE PROVIDERS MAY COMMUNICATE WITH HEALTH CARE PROVIDERS'  
22 REPRESENTATIVES;

23 (C) A HEALTH CARE PROVIDERS' REPRESENTATIVE IS THE ONLY PARTY AUTHOR-  
24 IZED TO NEGOTIATE WITH HEALTH CARE PLANS ON BEHALF OF THE HEALTH CARE  
25 PROVIDERS AS A GROUP;

26 (D) A HEALTH CARE PROVIDER CAN BE BOUND BY THE TERMS AND CONDITIONS  
27 NEGOTIATED BY THE HEALTH CARE PROVIDERS' REPRESENTATIVES; AND

28 (E) IN COMMUNICATING OR NEGOTIATING WITH THE HEALTH CARE PROVIDERS'  
29 REPRESENTATIVE, A HEALTH CARE PLAN IS ENTITLED TO CONTRACT WITH OR OFFER  
30 DIFFERENT CONTRACT TERMS AND CONDITIONS TO INDIVIDUAL COMPETING HEALTH  
31 CARE PROVIDERS.

32 2. A HEALTH CARE PROVIDERS' REPRESENTATIVE MAY NOT REPRESENT MORE THAN  
33 THIRTY PERCENT OF THE MARKET OF HEALTH CARE PROVIDERS OR OF A PARTICULAR  
34 HEALTH CARE PROVIDER TYPE OR SPECIALTY PRACTICING IN THE SERVICE AREA OR  
35 PROPOSED SERVICE AREA OF A HEALTH CARE PLAN THAT COVERS LESS THAN FIVE  
36 PERCENT OF THE ACTUAL NUMBER OF COVERED LIVES OF THE HEALTH CARE PLAN IN  
37 THE AREA, AS DETERMINED BY THE DEPARTMENT.

38 3. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT COLLECTIVE  
39 ACTION ON THE PART OF ANY HEALTH CARE PROVIDER WHO IS A MEMBER OF A  
40 COLLECTIVE BARGAINING UNIT RECOGNIZED PURSUANT TO THE NATIONAL LABOR  
41 RELATIONS ACT.

42 S 4924. REQUIREMENTS FOR HEALTH CARE PROVIDERS' REPRESENTATIVE. 1.  
43 BEFORE ENGAGING IN COLLECTIVE NEGOTIATIONS WITH A HEALTH CARE PLAN ON  
44 BEHALF OF HEALTH CARE PROVIDERS, A HEALTH CARE PROVIDERS' REPRESENTATIVE  
45 SHALL FILE WITH THE ATTORNEY GENERAL, IN THE MANNER PRESCRIBED BY THE  
46 ATTORNEY GENERAL, INFORMATION IDENTIFYING THE REPRESENTATIVE, THE REPRE-  
47 SENTATIVE'S PLAN OF OPERATION, AND THE REPRESENTATIVE'S PROCEDURES TO  
48 ENSURE COMPLIANCE WITH THIS TITLE.

49 2. BEFORE ENGAGING IN THE COLLECTIVE NEGOTIATIONS, THE HEALTH CARE  
50 PROVIDERS' REPRESENTATIVE SHALL ALSO SUBMIT TO THE ATTORNEY GENERAL FOR  
51 THE ATTORNEY GENERAL'S APPROVAL A REPORT IDENTIFYING THE PROPOSED  
52 SUBJECT MATTER OF THE NEGOTIATIONS OR DISCUSSIONS WITH THE HEALTH CARE  
53 PLAN AND THE EFFICIENCIES OR BENEFITS EXPECTED TO BE ACHIEVED THROUGH  
54 THE NEGOTIATIONS FOR BOTH THE PROVIDERS AND CONSUMERS OF HEALTH  
55 SERVICES. THE ATTORNEY GENERAL SHALL NOT APPROVE THE REPORT IF THE

1 ATTORNEY GENERAL DETERMINES THAT THE PROPOSED NEGOTIATIONS WOULD EXCEED  
2 THE AUTHORITY GRANTED UNDER THIS TITLE.

3 3. THE REPRESENTATIVE SHALL SUPPLEMENT THE INFORMATION IN THE REPORT  
4 ON A REGULAR BASIS OR AS NEW INFORMATION BECOMES AVAILABLE, INDICATING  
5 THAT THE SUBJECT MATTER OF THE NEGOTIATIONS WITH THE HEALTH CARE PLAN  
6 HAS CHANGED OR WILL CHANGE. IN NO EVENT SHALL THE REPORT BE LESS THAN  
7 EVERY THIRTY DAYS.

8 4. WITH THE ADVICE OF THE SUPERINTENDENT OF INSURANCE AND THE COMMIS-  
9 SIONER, THE ATTORNEY GENERAL SHALL APPROVE OR DISAPPROVE THE REPORT NOT  
10 LATER THAN THE TWENTIETH DAY AFTER THE DATE ON WHICH THE REPORT IS  
11 FILED. IF DISAPPROVED, THE ATTORNEY GENERAL SHALL FURNISH A WRITTEN  
12 EXPLANATION OF ANY DEFICIENCIES, ALONG WITH A STATEMENT OF SPECIFIC  
13 PROPOSALS FOR REMEDIAL MEASURES TO CURE THE DEFICIENCIES. IF THE ATTOR-  
14 NEY GENERAL DOES NOT SO ACT WITHIN THE TWENTY DAYS, THE REPORT SHALL BE  
15 DEEMED APPROVED.

16 5. A PERSON WHO ACTS AS A HEALTH CARE PROVIDERS' REPRESENTATIVE WITH-  
17 OUT THE APPROVAL OF THE ATTORNEY GENERAL UNDER THIS SECTION SHALL BE  
18 DEEMED TO BE ACTING OUTSIDE THE AUTHORITY GRANTED UNDER THIS TITLE.

19 6. BEFORE REPORTING THE RESULTS OF NEGOTIATIONS WITH A HEALTH CARE  
20 PLAN OR PROVIDING TO THE AFFECTED HEALTH CARE PROVIDERS AN EVALUATION OF  
21 ANY OFFER MADE BY A HEALTH CARE PLAN, THE HEALTH CARE PROVIDERS' REPRE-  
22 SENTATIVE SHALL FURNISH FOR APPROVAL BY THE ATTORNEY GENERAL, BEFORE  
23 DISSEMINATION TO THE HEALTH CARE PROVIDERS, A COPY OF ALL COMMUNICATIONS  
24 TO BE MADE TO THE HEALTH CARE PROVIDERS RELATED TO NEGOTIATIONS,  
25 DISCUSSIONS, AND OFFERS MADE BY THE HEALTH CARE PLAN.

26 7. A HEALTH CARE PROVIDERS' REPRESENTATIVE SHALL REPORT THE END OF  
27 NEGOTIATIONS TO THE ATTORNEY GENERAL NOT LATER THAN THE FOURTEENTH DAY  
28 AFTER THE DATE OF A HEALTH CARE PLAN DECISION DECLINING NEGOTIATION,  
29 CANCELING NEGOTIATIONS, OR FAILING TO RESPOND TO A REQUEST FOR NEGOTI-  
30 ATION. IN SUCH INSTANCES, A HEALTH CARE PROVIDERS' REPRESENTATIVE MAY  
31 REQUEST INTERVENTION FROM THE ATTORNEY GENERAL TO REQUIRE THE HEALTH  
32 CARE PLAN TO PARTICIPATE IN THE NEGOTIATION PURSUANT TO SUBDIVISION  
33 EIGHT OF THIS SECTION.

34 8. (A) IN THE EVENT THE ATTORNEY GENERAL DETERMINES THAT AN IMPASSE  
35 EXISTS IN THE NEGOTIATIONS, OR IN THE EVENT A HEALTH CARE PLAN DECLINES  
36 TO NEGOTIATE, CANCELS NEGOTIATIONS OR FAILS TO RESPOND TO A REQUEST FOR  
37 NEGOTIATION, THE ATTORNEY GENERAL SHALL RENDER ASSISTANCE AS FOLLOWS:

38 (1) TO ASSIST THE PARTIES TO EFFECT A VOLUNTARY RESOLUTION OF THE  
39 NEGOTIATIONS, THE ATTORNEY GENERAL SHALL APPOINT A MEDIATOR FROM A LIST  
40 OF QUALIFIED PERSONS MAINTAINED BY THE ATTORNEY GENERAL. IF THE MEDIATOR  
41 IS SUCCESSFUL IN RESOLVING THE IMPASSE, THEN THE HEALTH CARE PROVIDERS'  
42 REPRESENTATIVE SHALL PROCEED AS SET FORTH IN THIS ARTICLE;

43 (2) IF AN IMPASSE CONTINUES, THE ATTORNEY GENERAL SHALL APPOINT A  
44 FACT-FINDING BOARD OF NOT MORE THAN THREE MEMBERS FROM A LIST OF QUALI-  
45 FIED PERSONS MAINTAINED BY THE ATTORNEY GENERAL, WHICH FACT-FINDING  
46 BOARD SHALL HAVE, IN ADDITION TO THE POWERS DELEGATED TO IT BY THE  
47 BOARD, THE POWER TO MAKE RECOMMENDATIONS FOR THE RESOLUTION OF THE  
48 DISPUTE;

49 (B) THE FACT-FINDING BOARD, ACTING BY A MAJORITY OF ITS MEMBERS, SHALL  
50 TRANSMIT ITS FINDINGS OF FACT AND RECOMMENDATIONS FOR RESOLUTION OF THE  
51 DISPUTE TO THE ATTORNEY GENERAL, AND MAY THEREAFTER ASSIST THE PARTIES  
52 TO EFFECT A VOLUNTARY RESOLUTION OF THE DISPUTE. THE FACT-FINDING BOARD  
53 SHALL ALSO SHARE ITS FINDINGS OF FACT AND RECOMMENDATIONS WITH THE  
54 HEALTH CARE PROVIDERS' REPRESENTATIVE AND THE HEALTH CARE PLAN. IF WITH-  
55 IN TWENTY DAYS AFTER THE SUBMISSION OF THE FINDINGS OF FACT AND RECOM-  
56 MENDATIONS, THE IMPASSE CONTINUES, THE ATTORNEY GENERAL SHALL ORDER A

1 RESOLUTION TO THE NEGOTIATIONS BASED UPON THE FINDINGS OF FACT AND  
2 RECOMMENDATIONS SUBMITTED BY THE FACT-FINDING BOARD.

3 9. ANY PROPOSED AGREEMENT BETWEEN HEALTH CARE PROVIDERS AND A HEALTH  
4 CARE PLAN NEGOTIATED PURSUANT TO THIS TITLE SHALL BE SUBMITTED TO THE  
5 ATTORNEY GENERAL FOR FINAL APPROVAL. THE ATTORNEY GENERAL SHALL APPROVE  
6 OR DISAPPROVE THE AGREEMENT WITHIN SIXTY DAYS OF SUCH SUBMISSION.

7 10. THE ATTORNEY GENERAL MAY COLLECT INFORMATION FROM OTHER PERSONS TO  
8 ASSIST IN EVALUATING THE IMPACT OF THE PROPOSED ARRANGEMENT ON THE  
9 HEALTH CARE MARKETPLACE. THE ATTORNEY GENERAL SHALL COLLECT INFORMATION  
10 FROM HEALTH PLAN COMPANIES AND HEALTH CARE PROVIDERS OPERATING IN THE  
11 SAME GEOGRAPHIC AREA AS THE HEALTH CARE COOPERATIVE.

12 S 4925. CERTAIN COLLECTIVE ACTION PROHIBITED. 1. THIS TITLE IS NOT  
13 INTENDED TO AUTHORIZE COMPETING HEALTH CARE PROVIDERS TO ACT IN CONCERT  
14 IN RESPONSE TO A REPORT ISSUED BY THE HEALTH CARE PROVIDERS' REPRESENTATIVE  
15 RELATED TO THE REPRESENTATIVE'S DISCUSSIONS OR NEGOTIATIONS WITH  
16 HEALTH CARE PLANS.

17 2. NO HEALTH CARE PROVIDERS' REPRESENTATIVE SHALL NEGOTIATE ANY AGREE-  
18 MENT THAT EXCLUDES, LIMITS THE PARTICIPATION OR REIMBURSEMENT OF, OR  
19 OTHERWISE LIMITS THE SCOPE OF SERVICES TO BE PROVIDED BY ANY HEALTH CARE  
20 PROVIDER OR GROUP OF HEALTH CARE PROVIDERS WITH RESPECT TO THE PERFORM-  
21 ANCE OF SERVICES THAT ARE WITHIN THE HEALTH CARE PROVIDER'S SCOPE OF  
22 PRACTICE, LICENSE, REGISTRATION, OR CERTIFICATE.

23 S 4926. FEES. EACH PERSON WHO ACTS AS THE REPRESENTATIVE OR NEGOTIAT-  
24 ING PARTIES UNDER THIS TITLE SHALL PAY TO THE DEPARTMENT A FEE TO ACT AS  
25 A REPRESENTATIVE. THE ATTORNEY GENERAL, BY RULE, SHALL SET FEES IN  
26 AMOUNTS DEEMED REASONABLE AND NECESSARY TO COVER THE COSTS INCURRED BY  
27 THE DEPARTMENT IN ADMINISTERING THIS TITLE. ANY FEE COLLECTED UNDER THIS  
28 SECTION SHALL BE DEPOSITED IN THE STATE TREASURY TO THE CREDIT OF THE  
29 GENERAL FUND/STATE OPERATIONS - 003 FOR THE NEW YORK STATE DEPARTMENT OF  
30 HEALTH FUND.

31 S 4927. MONITORING OF AGREEMENTS. THE ATTORNEY GENERAL SHALL ACTIVELY  
32 MONITOR AGREEMENTS APPROVED UNDER THIS TITLE TO ENSURE THAT THE AGREE-  
33 MENT REMAINS IN COMPLIANCE WITH THE CONDITIONS OF APPROVAL. UPON  
34 REQUEST, A HEALTH CARE PLAN OR HEALTH CARE PROVIDER SHALL PROVIDE INFOR-  
35 MATION REGARDING COMPLIANCE. THE ATTORNEY GENERAL MAY REVOKE AN APPROVAL  
36 UPON A FINDING THAT THE AGREEMENT IS NOT IN SUBSTANTIAL COMPLIANCE WITH  
37 THE TERMS OF THE APPLICATION OR THE CONDITIONS OF APPROVAL.

38 S 4928. CONFIDENTIALITY. ALL REPORTS AND OTHER INFORMATION REQUIRED TO  
39 BE REPORTED TO THE DEPARTMENT OF LAW UNDER THIS TITLE INCLUDING INFORMA-  
40 TION OBTAINED BY THE ATTORNEY GENERAL PURSUANT TO SUBDIVISION TEN OF  
41 SECTION FORTY-NINE HUNDRED TWENTY-FOUR OF THIS TITLE SHALL NOT BE  
42 SUBJECT TO DISCLOSURE UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW OR  
43 ARTICLE THIRTY-ONE OF THE CIVIL PRACTICE LAW AND RULES.

44 S 4929. SEVERABILITY AND CONSTRUCTION. THE PROVISIONS OF THIS TITLE  
45 SHALL BE SEVERABLE, AND IF ANY COURT OF COMPETENT JURISDICTION DECLARES  
46 ANY PHRASE, CLAUSE, SENTENCE OR PROVISION OF THIS TITLE TO BE INVALID,  
47 OR ITS APPLICABILITY TO ANY GOVERNMENT, AGENCY, PERSON OR CIRCUMSTANCE  
48 IS DECLARED INVALID, THE REMAINDER OF THIS TITLE AND ITS RELEVANT APPLI-  
49 CABILITY SHALL NOT BE AFFECTED. THE PROVISIONS OF THIS TITLE SHALL BE  
50 LIBERALLY CONSTRUED TO GIVE EFFECT TO THE PURPOSES THEREOF.

51 S 4. This act shall take effect on the one hundred twentieth day after  
52 it shall have become a law; provided that the commissioner of health is  
53 authorized to promulgate any and all rules and regulations and take any  
54 other measures necessary to implement this act on its effective date on  
55 or before such date.