

# STATE OF NEW YORK

1575

2021-2022 Regular Sessions

## IN SENATE

January 13, 2021

Introduced by Sens. RIVERA, COMRIE, HARCKHAM, KRUEGER, MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Health

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 neces-  
10 sary to displace competition with regulation of health plan-provider  
11 agreements and authorize collective negotiations on the terms and condi-  
12 tions 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 which arise  
16 under applicable federal or state collective bargaining statutes.

17 § 2. This act shall be known and may be cited as the "health care  
18 consumer and provider protection act".

19 § 3. Article 49 of the public health law is amended by adding a new  
20 title III to read as follows:

21 TITLE III  
22 COLLECTIVE NEGOTIATIONS BY HEALTH CARE  
23 PROVIDERS WITH HEALTH CARE PLANS

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

LBD00188-01-1

1 Section 4920. Definitions.

2 4921. Non-fee related collective negotiation authorized.

3 4922. Fee related collective negotiation.

4 4923. Collective negotiation requirements.

5 4924. Requirements for health care providers' representative.

6 4925. Certain collective action prohibited.

7 4926. Fees.

8 4927. Monitoring of agreements.

9 4928. Confidentiality.

10 4929. Severability and construction.

11 § 4920. Definitions. For purposes of this title:

12 1. "Health care plan" means an entity (other than a health care  
13 provider) that approves, provides, arranges for, or pays for health care  
14 services, including but not limited to:

15 (a) a health maintenance organization licensed pursuant to article  
16 forty-three of the insurance law or certified pursuant to article  
17 forty-four of this chapter;

18 (b) any other organization certified pursuant to article forty-four of  
19 this chapter; or

20 (c) an insurer or corporation subject to the insurance law.

21 2. "Person" means an individual, association, corporation, or any  
22 other legal entity.

23 3. "Health care providers' representative" means a third party who is  
24 authorized by health care providers to negotiate on their behalf with  
25 health care plans over contractual terms and conditions affecting those  
26 health care providers.

27 4. "Strike" means a work stoppage in part or in whole, direct or indi-  
28 rect, by a health care provider or health care providers to gain compli-  
29 ance with demands made on a health care plan.

30 5. "Substantial market share in a business line" exists if a health  
31 care plan's market share of a business line within the geographic area  
32 for which a negotiation has been approved by the commissioner, alone or  
33 in combination with the market shares of affiliates, exceeds either ten  
34 percent of the total number of covered lives in that service area for  
35 such business line or twenty-five thousand lives, or if the commissioner  
36 determines the market share of the insurer in the relevant insurance  
37 product and geographic markets for the services of the providers seeking  
38 to collectively negotiate significantly exceeds the countervailing  
39 market share of the providers acting individually.

40 6. "Health care provider" means a person who is licensed, certified,  
41 registered or authorized pursuant to title eight of the education law  
42 and who practices that profession as a health care provider as an inde-  
43 pendent contractor and/or who is an owner, officer, shareholder, or  
44 proprietor of a health care provider, or an entity that employs or  
45 utilizes health care providers to provide health care services, includ-  
46 ing but not limited to a hospital licensed under article twenty-eight of  
47 this chapter or an accountable care organization under article twenty-  
48 nine-E of this chapter; or an entity authorized under articles thirty-  
49 six or forty of this chapter; or a fiscal intermediary operating pursu-  
50 ant to section three hundred sixty-five-f of the social services law. A  
51 health care provider under title eight of the education law who prac-  
52 tices as an employee of a health care provider shall not be deemed a  
53 health care provider for purposes of this title.

54 § 4921. Non-fee related collective negotiation authorized. 1. Health  
55 care providers practicing within the geographic area for which a negoti-  
56 ation has been approved by the commissioner may meet and communicate for

1 the purpose of collectively negotiating the following terms and condi-  
2 tions of provider contracts with the health care plan:

3 (a) the details of the utilization review plan as defined pursuant to  
4 subdivision ten of section forty-nine hundred of this article and  
5 subsection (j) of section four thousand nine hundred of the insurance  
6 law;

7 (b) coverage provisions; health care benefits; benefit maximums,  
8 including benefit limitations; and exclusions of coverage;

9 (c) the definition of medical necessity;

10 (d) the clinical practice guidelines used to make medical necessity  
11 and utilization review determinations;

12 (e) preventive care and other medical management practices;

13 (f) drug formularies and standards and procedures for prescribing  
14 off-formulary drugs;

15 (g) respective physician liability for the treatment or lack of treat-  
16 ment of covered persons;

17 (h) the details of health care plan risk transfer arrangements with  
18 providers;

19 (i) plan administrative procedures, including methods and timing of  
20 health care provider payment for services;

21 (j) procedures to be utilized to resolve disputes between the health  
22 care plan and health care providers;

23 (k) patient referral procedures including, but not limited to, those  
24 applicable to out-of-network referrals;

25 (l) the formulation and application of health care provider reimburse-  
26 ment procedures;

27 (m) quality assurance programs;

28 (n) the process for rendering utilization review determinations  
29 including: establishment of a process for rendering utilization review  
30 determinations which shall, at a minimum, include: written procedures to  
31 assure that utilization reviews and determinations are conducted within  
32 the timeframes established in this article; procedures to notify an  
33 enrollee, an enrollee's designee and/or an enrollee's health care  
34 provider of adverse determinations; and procedures for appeal of adverse  
35 determinations, including the establishment of an expedited appeals  
36 process for denials of continued inpatient care or where there is immi-  
37 nent or serious threat to the health of the enrollee; and

38 (o) health care provider selection and termination criteria used by  
39 the health care plan.

40 2. Nothing in this section shall be construed to allow or authorize an  
41 alteration of the terms of the internal and external review procedures  
42 set forth in law.

43 3. Nothing in this section shall be construed to allow a strike of a  
44 health care plan by health care providers or plans as otherwise set  
45 forth in the laws of this state.

46 4. Nothing in this section shall be construed to allow or authorize  
47 terms or conditions which would impede the ability of a health care plan  
48 to obtain or retain accreditation by the national committee for quality  
49 assurance or a similar body.

50 § 4922. Fee related collective negotiation. 1. If the health care plan  
51 has substantial market share in a business line in any geographic area  
52 for which a negotiation has been approved by the commissioner, health  
53 care providers practicing within that geographic area may collectively  
54 negotiate the following terms and conditions relating to that business  
55 line with the health care plan:

1 (a) the fees assessed by the health care plan for services, including  
2 fees established through the application of reimbursement procedures;

3 (b) the conversion factors used by the health care plan in a  
4 resource-based relative value scale reimbursement methodology or other  
5 similar methodology; provided the same are not otherwise established by  
6 state or federal law or regulation;

7 (c) the amount of any discount granted by the health care plan on the  
8 fee of health care services to be rendered by health care providers;

9 (d) the dollar amount of capitation or fixed payment for health  
10 services rendered by health care providers to health care plan enrol-  
11 lees;

12 (e) the procedure code or other description of a health care service  
13 covered by a payment and the appropriate grouping of the procedure  
14 codes; or

15 (f) the amount of any other component of the reimbursement methodology  
16 for a health care service.

17 2. Nothing herein shall be deemed to affect or limit the right of a  
18 health care provider or group of health care providers to collectively  
19 petition a government entity for a change in a law, rule, or regulation.

20 § 4923. Collective negotiation requirements. 1. Collective negotiation  
21 rights granted by this title must conform to the following requirements:

22 (a) health care providers may communicate with other health care  
23 providers regarding the contractual terms and conditions to be negoti-  
24 ated with a health care plan;

25 (b) health care providers may communicate with health care providers'  
26 representatives;

27 (c) a health care providers' representative is the only party author-  
28 ized to negotiate with health care plans on behalf of the health care  
29 providers as a group;

30 (d) a health care provider can be bound by the terms and conditions  
31 negotiated by the health care providers' representatives; and

32 (e) in communicating or negotiating with the health care providers'  
33 representative, a health care plan is entitled to contract with or offer  
34 different contract terms and conditions to individual competing health  
35 care providers.

36 2. A health care providers' representative may not represent more than  
37 thirty percent of the market of health care providers or of a particular  
38 health care provider type or specialty practicing in the geographic area  
39 for which a negotiation has been approved by the commissioner if the  
40 health care plan covers less than five percent of the actual number of  
41 covered lives of the health care plan in the area, as determined by the  
42 department.

43 3. Nothing in this section shall be construed to prohibit collective  
44 action on the part of any health care provider who is a member of a  
45 collective bargaining unit recognized pursuant to the national labor  
46 relations act.

47 § 4924. Requirements for health care providers' representative. 1.  
48 Before engaging in collective negotiations with a health care plan on  
49 behalf of health care providers, a health care providers' representative  
50 shall file with the commissioner, in the manner prescribed by the  
51 commissioner, information identifying the representative, the represen-  
52 tative's plan of operation, and the representative's procedures to  
53 ensure compliance with this title.

54 2. Before engaging in the collective negotiations, the health care  
55 providers' representative shall also submit to the commissioner for the  
56 commissioner's approval a report identifying the proposed subject matter

1 of the negotiations or discussions with the health care plan and the  
2 efficiencies or benefits expected to be achieved through the negoti-  
3 ations for both the providers and consumers of health services. The  
4 commissioner shall not approve the report if the commissioner, in  
5 consultation with the superintendent of financial services determines  
6 that the proposed negotiations would exceed the authority granted under  
7 this title.

8 3. The representative shall supplement the information in the report  
9 on a regular basis or as new information becomes available, indicating  
10 that the subject matter of the negotiations with the health care plan  
11 has changed or will change. In no event shall the report be less than  
12 every thirty days.

13 4. With the advice of the superintendent of financial services and the  
14 attorney general, the commissioner shall approve or disapprove the  
15 report not later than the twentieth day after the date on which the  
16 report is filed. If disapproved, the commissioner shall furnish a writ-  
17 ten explanation of any deficiencies, along with a statement of specific  
18 proposals for remedial measures to cure the deficiencies. If the commis-  
19 sioner does not so act within the twenty days, the report shall be  
20 deemed approved.

21 5. A person who acts as a health care providers' representative with-  
22 out the approval of the commissioner under this section shall be deemed  
23 to be acting outside the authority granted under this title.

24 6. Before reporting the results of negotiations with a health care  
25 plan or providing to the affected health care providers an evaluation of  
26 any offer made by a health care plan, the health care providers' repre-  
27 sentative shall furnish for approval by the commissioner, before dissem-  
28 ination to the health care providers, a copy of all communications to be  
29 made to the health care providers related to negotiations, discussions,  
30 and offers made by the health care plan.

31 7. A health care providers' representative shall report the end of  
32 negotiations to the commissioner not later than the fourteenth day after  
33 the date of a health care plan decision declining negotiation, canceling  
34 negotiations, or failing to respond to a request for negotiation. In  
35 such instances, a health care providers' representative may request  
36 intervention from the commissioner to require the health care plan to  
37 participate in the negotiation pursuant to subdivision eight of this  
38 section.

39 8. (a) In the event the commissioner determines that an impasse exists  
40 in the negotiations, or in the event a health care plan declines to  
41 negotiate, cancels negotiations or fails to respond to a request for  
42 negotiation, the commissioner shall render assistance as follows:

43 (1) to assist the parties to effect a voluntary resolution of the  
44 negotiations, the commissioner shall appoint a mediator from a list of  
45 qualified persons maintained by the commissioner. If the mediator is  
46 successful in resolving the impasse, then the health care providers'  
47 representative shall proceed as set forth in this article;

48 (2) if an impasse continues, the commissioner shall appoint a fact-  
49 finding board of not more than three members from a list of qualified  
50 persons maintained by the commissioner, which fact-finding board shall  
51 have, in addition to the powers delegated to it by the board, the power  
52 to make recommendations for the resolution of the dispute;

53 (b) The fact-finding board, acting by a majority of its members, shall  
54 transmit its findings of fact and recommendations for resolution of the  
55 dispute to the commissioner, and may thereafter assist the parties to  
56 effect a voluntary resolution of the dispute. The fact-finding board

1 shall also share its findings of fact and recommendations with the  
2 health care providers' representative and the health care plan. If with-  
3 in twenty days after the submission of the findings of fact and recom-  
4 mendations, the impasse continues, the commissioner shall order a resol-  
5 ution to the negotiations based upon the findings of fact and  
6 recommendations submitted by the fact-finding board.

7 9. Any proposed agreement between health care providers and a health  
8 care plan negotiated pursuant to this title shall be submitted to the  
9 commissioner for final approval. The commissioner shall approve or  
10 disapprove the agreement within sixty days of such submission.

11 10. The commissioner may collect information from other persons to  
12 assist in evaluating the impact of the proposed arrangement on the  
13 health care marketplace. The commissioner shall collect information from  
14 health plan companies and health care providers operating in the same  
15 geographic area.

16 § 4925. Certain collective action prohibited. 1. This title is not  
17 intended to authorize competing health care providers to act in concert  
18 in response to a report issued by the health care providers' represen-  
19 tative related to the representative's discussions or negotiations with  
20 health care plans.

21 2. No health care providers' representative shall negotiate any agree-  
22 ment that excludes, limits the participation or reimbursement of, or  
23 otherwise limits the scope of services to be provided by any health care  
24 provider or group of health care providers with respect to the perform-  
25 ance of services that are within the health care provider's scope of  
26 practice, license, registration, or certificate.

27 § 4926. Fees. Each person who acts as the representative or negotiat-  
28 ing parties under this title shall pay to the department a fee to act as  
29 a representative. The commissioner, by rule, shall set fees in amounts  
30 deemed reasonable and necessary to cover the costs incurred by the  
31 department in administering this title. Any fee collected under this  
32 section shall be deposited in the state treasury to the credit of the  
33 general fund/state operations - 003 for the New York state department of  
34 health fund.

35 § 4927. Monitoring of agreements. The commissioner shall actively  
36 monitor agreements approved under this title to ensure that the agree-  
37 ment remains in compliance with the conditions of approval. Upon  
38 request, a health care plan or health care provider shall provide infor-  
39 mation regarding compliance. The commissioner may revoke an approval  
40 upon a finding that the agreement is not in substantial compliance with  
41 the terms of the application or the conditions of approval.

42 § 4928. Confidentiality. All reports and other information required to  
43 be reported to the department of law under this title including informa-  
44 tion obtained by the commissioner pursuant to subdivision ten of section  
45 forty-nine hundred twenty-four of this title shall not be subject to  
46 disclosure under article six of the public officers law or article thir-  
47 ty-one of the civil practice law and rules.

48 § 4929. Severability and construction. The provisions of this title  
49 shall be severable, and if any court of competent jurisdiction declares  
50 any phrase, clause, sentence or provision of this title to be invalid,  
51 or its applicability to any government, agency, person or circumstance  
52 is declared invalid, the remainder of this title and its relevant appli-  
53 cability shall not be affected. The provisions of this title shall be  
54 liberally construed to give effect to the purposes thereof.

55 § 4. This act shall take effect on the one hundred twentieth day after  
56 it shall have become a law; provided that the commissioner of health is

1 authorized to promulgate any and all rules and regulations and take any  
2 other measures necessary to implement this act on its effective date on  
3 or before such date.