

SUBJECT: Joint negotiation by physicians with health-benefit plans

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Smithee, Eiland, Averitt, Burnam, Moreno, Olivo, Seaman,
Thompson

0 nays

1 absent — G. Lewis

WITNESSES: (*On original bill:*)
For — None

Against — Jeff Kloster, Humana; Mike Pollard, Texas Association of Life
and Health Insurers; Leah Rummel, Texas Association of Health Plans

BACKGROUND: Federal antitrust law limits the ability of physicians to negotiate jointly with health-benefit plans. Individual physicians can negotiate on their own, and groups of physicians, such as independent provider associations or individual practice associations (IPAs), can negotiate contract terms for the physicians within the IPA. These IPAs, however, are subject to strict federal guidelines on the sharing of proprietary information and to prohibitions against price-fixing. Groups of physicians not organized into an IPA cannot negotiate jointly with health-benefit plans. They may violate antitrust laws if they discuss the terms or conditions of their contracts with health-benefit plans.

Physicians may seek advisory opinions from the Federal Trade Commission (FTC) on whether their actions would violate antitrust laws. The penalty for violating antitrust law can be up to three years in federal prison or a \$350,000 fine. An IPA or other group of physicians can be fined up to \$10 million for an antitrust violation.

Federal law allows states to carve out exceptions to antitrust laws to enable physicians to negotiate jointly. In 1999, the 76th Texas Legislature enacted SB 1468 by Harris, regulating joint negotiations by physicians. The act

covered numerous aspects of the negotiation process, including the authority to negotiate on some items, authority of the attorney general to allow some additional negotiations, and prohibition of work slowdowns or strikes.

Under Insurance Code, art. 29.10, physicians may not negotiate jointly to require a physician or group of physicians to participate in all products within the same health-benefit plan. Art. 29.06 authorizes the Texas Department of Insurance (TDI) to collect and investigate information annually that TDI requires to determine the average number of covered lives per month per county for every health-care entity in the state and the annual impact, if any, of physicians' joint negotiations on average physician fees in the state.

DIGEST:

CSHB 3012 would remove the prohibition against physicians jointly negotiating participation in all products that a health plan offers. It also would provide that detailed commercial or financial information and internal operating or business information that physicians give the attorney general or TDI is confidential and cannot be examined or used by anyone without the consent of the person who produced the information. Confidentiality would extend to physician fees, reimbursement rates, and income and revenue information.

The bill would authorize TDI to collect from insurers, on a quarterly basis, information it needed to determine the number of covered lives per month per county for each product type offered by health-care entities.

The bill would extend the expiration date for the regulations concerning physicians' negotiations by two years, to September 1, 2005.

CSHB 3012 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS
SAY:**

CSHB 3012 would encourage physicians to take advantage of the joint negotiating options created last session. The attorney general must approve a request to enter into joint negotiations if the attorney general finds that the applicants have demonstrated that the likely benefits would outweigh the disadvantages from a potential reduction in competition. To make this

determination, the attorney general requires sensitive business information such as fee schedules and revenue numbers. Wary that this information would become public due to open records, physicians have been hesitant to seek the attorney general's opinion. Only one application for joint negotiations has been filed to date. This bill would encourage physicians to employ the joint negotiating options by ensuring that information about their business would remain confidential.

CSHB 3012 would allow the attorney general to obtain timely information through TDI, rather than through physicians. Under current law, the attorney general may request market information from physicians in order to form an opinion about joint negotiations. Often, physicians do not have this type of information and would have to purchase it from a market research firm if they wanted an attorney general's opinion. This bill would require insurers to provide quarterly information about each product type, which then could be shared with the attorney general.

This bill would authorize physicians to negotiate to participate in some products, but not all, that an insurer offers. This would allow physicians to choose not to serve an organization or group, rather than being forced to participate in all or nothing.

CSHB 3012 also would extend the expiration for the joint negotiating regulations by two years to 2005. The process of writing the rules required for the legislation enacted last session was long and complicated, and the rules have not been in place for very long. It would be better to let them stand so that all parties do not need to go back to the drafting table next session before the rules have been tested by time.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

HB 3012 as filed would have authorized joint negotiations over fees and prices. It also would have modified the attorney general's role in providing an opinion on a joint negotiation and would have directed TDI to make certain information about insurers public. The committee substitute discarded these changes but included the confidentiality provision and extended the statute's expiration date.

HB 3012
House Research Organization
page 4