SECOND REGULAR SESSION

SENATE BILL NO. 829

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SINGLETON.

Read 1st time January 13, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

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AN ACT

To amend chapter 354, RSMo, by adding thereto one new section relating to physicians.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 354, RSMo, is amended by adding thereto one new section, to be known as section 354.526, to read as follows:

354.526. 1. This act shall be known and may be cited as "The Patient-Physician Advocacy Act".

2. As used in this section, the following terms shall mean:

(1) "Department", the department of insurance;

(2) "Health insurance plan or health insurance plans", a plan or plans described in subsection 3 of this section;

(3) "Person", an individual, association, corporation, or any other legal entity; and

(4) "Physicians' representative", a third party, either a physician or other person who is authorized by physicians to negotiate on their behalf with health insurance plans over contractual terms and conditions affecting those physicians.

3. This section applies to all individual and group health insurance plans providing coverage on an expense incurred basis, individual and group service or indemnity type contracts issued by a nonprofit corporation, individual and group service contracts issued by a health maintenance organization, all self-insured group arrangements to the extent not preempted by federal law and all managed health care delivery entities of any type or description, that are delivered, issued for delivery, continued or renewed on or after August 28, 2002.

4. Nothing in this section shall apply to accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care, short-term major medical policies of

six months or less duration, or other limited benefit health insurance policies.

5. Competing physicians within the service area of a health insurance plan may meet and communicate for the purpose of jointly negotiating terms and conditions of contracts with the health insurance plan including, but not limited to:

(1) Practices and procedures to assess and improve the delivery of effective, cost-efficient preventive health care services, including childhood immunizations, prenatal care, and mammograms and other cancer screening tests or procedures;

(2) Practices and procedures to encourage early detection and effective, cost-efficient management of diseases and illnesses in children;

(3) Practices and procedures to assess and improve the delivery of women's medical and health care, including care for menopause and osteoporosis;

(4) Clinical criteria for effective, cost-efficient disease management programs, including diabetes, asthma, and cardiovascular disease;

(5) Practices and procedures to encourage and promote patient education and treatment compliance, including parental involvement with their children's health care;

(6) Practices and procedures to identify, correct, and prevent potentially fraudulent activities;

(7) Practices and procedures for the effective, cost-efficient use of outpatient surgery;

(8) Clinical practice guidelines and coverage criteria;

(9) Administrative procedures, including methods and timing of physician payment for services;

(10) Dispute resolution procedures relating to disputes between health insurance plans and physicians;

(11) Patient referral procedures;

(12) Formulation and application of physician reimbursement methodology;

(13) Quality assurance programs;

(14) Health service utilization review procedures;

(15) Health insurance plan physician selection and termination criteria; and

(16) The inclusion or alteration of terms and conditions to the extent they are the subject of government regulation prohibiting or requiring the particular term or condition in question; provided, however, that such restriction does not limit physicians' right to jointly petition government for a change in such regulation.

6. The department may collect information necessary to determine the annual impact, if any, of this section on average physician fees in this state.

7. Competing physicians' exercise of joint negotiation rights granted by this section shall conform to the following criteria:

(1) Physicians may communicate with each other with respect to the contractual

terms and conditions to be negotiated with a health insurance plan;

(2) Physicians may communicate with the third party who is authorized to negotiate on their behalf with health insurance plans over these contractual terms and conditions;

(3) The third party is the sole party authorized to negotiate with health insurance plans on behalf of the physicians as a group;

(4) At the option of each physician, the physicians may agree to be bound by the terms and conditions negotiated by the third party authorized to represent their interests.

8. Health insurance plans communicating or negotiating with the physicians' representative shall remain free to contract with or offer different contract terms and conditions to individual physicians.

9. The physicians' representative shall comply with the provisions of this section.

10. Any person or organization proposing to act or acting as a representative of physicians for the purpose of exercising authority granted pursuant to this section shall comply with the following requirements:

(1) Before engaging in any negotiations with health insurance plans on behalf of physicians, the representative shall furnish, for the department's approval, a report identifying:

(a) The representative's name and business address;

(b) The names and addresses of the physicians who will be represented by the representative;

(c) The relationship of the physicians requesting joint representation to the total population of physicians in a health insurance plan's geographic service area;

(d) The health insurance plans with which the representative intends to negotiate on behalf of the identified physicians;

(e) The proposed subject matter of the negotiations or discussions with the health insurance plans;

(f) The representative's plan of operation and procedures to ensure compliance with this section;

(g) The expected impact of the negotiations on the quality of patient care; and

(h) The benefits of a contract between the identified health insurance plan and physicians;

(2) After the parties identified in the initial filing have reached an agreement, the representative shall furnish, for the department's approval, a copy of the proposed contract and plan of action; and

(3) Within fourteen days of a health insurance plan decision declining

negotiation, terminating negotiation, or failing to respond to a request for negotiation, the representative shall report to the department. If negotiations resume within sixty days of such notification to the department, the applicant shall be permitted to renew the previously filed report without submitting a new report for approval.

11. The department shall either approve or disapprove an initial filing, supplemental filing, or a proposed contract within thirty days of each filing. If disapproved, the department shall furnish a written explanation of any deficiencies along with a statement of specific remedial measures as to how such deficiencies could be corrected. A representative who fails to obtain the department's approval is deemed to act outside the authority granted under this section.

12. The department shall approve a request to enter into negotiations or a proposed contract if the department determines that the applicants have demonstrated that the likely benefits resulting from the negotiation or proposed contract outweigh the disadvantages attributable to a reduction in competition that may result from the negotiation or proposed contract. The department shall consider physician distribution by specialty and its effect on competition. The negotiation shall represent no more than ten percent of the physicians in a health insurance plan's defined geographic service area.

13. An approval of the initial filing by the department shall be effective for all subsequent negotiations between the parties specified in the initial filing.

14. If the department does not issue a written approval or rejection of an initial filing, supplemental filing, or proposed contract within the specified time period, the applicant shall have the right to petition a circuit court for a mandamus order requiring the department to approve or disapprove the contents of the filing forthwith. The petition shall be filed in the circuit court of Cole County.

15. Nothing contained in this section shall be construed to enable physicians to jointly coordinate any cessation, reduction, or limitation of health care services. Physicians may not negotiate with the plan to exclude, limit, or otherwise restrict non-physician health care providers from participation in a health insurance plan based substantially on the fact the health care provider is not a licensed physician unless that restriction, exclusion, or limitation is otherwise authorized by law. The representative of the physicians shall advise physicians of the provisions of this section and shall warn physicians of the potential for legal action against physicians who violate state or federal antitrust laws when acting outside the authority of this section.

16. The department and the director shall have the authority to promulgate rules necessary to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and

is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

17. This section shall not be construed to prohibit physicians from negotiating the terms and conditions of contracts as otherwise authorized by law.

18. Each person who acts as the representative of negotiating parties under this section shall pay to the department a fee to act as a representative. The department, by rule, shall set fees in amounts reasonable and necessary to cover the costs incurred by the state in administering this section. A fee collected pursuant to this section shall be paid to the director of revenue and deposited in the state treasury to the credit of the general revenue fund.

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