



1 joint action on behalf of physicians. Without such joint  
2 action, the health benefit plan can virtually dictate the terms  
3 of the contracts that it offers to physicians.

4 The State further finds that it is appropriate and  
5 necessary to authorize collective mediation between competing  
6 physicians and health benefit plans when the imbalances in  
7 bargaining capacity described in this section exist.

8 The purpose of this chapter is to authorize physicians to  
9 engage in collective mediation with health benefit plans.

10 § -2 **Definitions.** As used in this chapter, unless the  
11 context indicates otherwise:

12 "Authorized third party" means a person authorized by the  
13 physicians to negotiate on their behalf with a health benefit  
14 plan under this chapter.

15 "Geographic service area" means the geographic area of the  
16 physicians seeking to jointly negotiate.

17 "Health benefit plan" means an accident or health insurer  
18 covered under article 10A of chapter 431, a mutual benefit  
19 society covered under article 1 of chapter 432, or a health



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1 maintenance organization covered under chapter 432D, but does  
2 not include a self-insured health benefit plan.

3 "Provider" means "health care professional," as defined in  
4 section 451D-2.

5 § -3 Collective action by competing physicians. (a)

6 Competing physicians may meet and communicate in order to  
7 collectively mediate with a health benefit plan concerning any  
8 of the contract terms and conditions described in this  
9 subsection, but may not negotiate the exclusion of providers who  
10 are nonphysicians from direct reimbursement by the health  
11 benefit plan or the setting in which providers who are  
12 nonphysicians deliver services. Competing physicians may not  
13 engage in a boycott related to these terms and conditions.

14 Competing physicians may meet and communicate concerning:

15 (1) Physician clinical practice guidelines and coverage  
16 criteria;

17 (2) The respective liability of physicians and the health  
18 benefit plan for the treatment or lack of treatment of  
19 insured or enrolled persons;



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- 1           (3) Administrative procedures, including methods and  
2            timing of the payment of services to physicians;
- 3           (4) Procedures for the resolution of disputes between the  
4            health benefit plan and physicians;
- 5           (5) Patient referral procedures;
- 6           (6) The formulation and application of payment fees and  
7            methodology;
- 8           (7) Quality assurance programs;
- 9           (8) Health service utilization review procedures; and
- 10          (9) Criteria to be used by health benefit plans for the  
11          selection and termination of physicians, including  
12          whether to engage in selective contracting.
- 13          (b) An authorized third party that intends to negotiate  
14          under subsection (a) shall provide the attorney general with  
15          written notice of the intended negotiations before the  
16          negotiations begin.
- 17          (c) In exercising the collective rights established under  
18          subsection (a):



- 1           (1) Physicians may communicate with each other with  
2           respect to the contractual terms and conditions to be  
3           negotiated with the health benefit plan;
- 4           (2) Physicians may communicate with an authorized third  
5           party regarding the terms and conditions of contracts  
6           allowed under this section;
- 7           (3) The authorized third party shall be the sole party  
8           authorized to negotiate with the health benefit plan  
9           on behalf of a defined group of physicians;
- 10          (4) Physicians shall be bound by the terms and conditions  
11          negotiated by the authorized third party that  
12          represents their interests;
- 13          (5) A health benefit plan communicating and negotiating  
14          with the authorized third party may contract with, or  
15          offer different contract terms and conditions to,  
16          individual competing physicians;
- 17          (6) An authorized third party may not represent physicians  
18          if the health benefit plan has less than a five per  
19          cent market share as determined by the number of  
20          covered lives as reported by the insurance



1 commissioner for the most recently completed calendar  
2 year or by the actual number of consumers of prepaid  
3 comprehensive health services; provided that in this  
4 paragraph, "covered lives" means the total number of  
5 individuals who are entitled to benefits under the  
6 health benefit plan; and

7 (7) Any authorized third party shall comply with  
8 subsection (d).

9 (d) A person acting or proposing to act as an authorized  
10 third party under this section, before engaging in collective  
11 mediation with the health benefit plan, shall file with the  
12 attorney general the information that identifies the authorized  
13 third party, the physicians represented by the third party, the  
14 authorized third party's plan of operation, and the authorized  
15 third party's procedures to ensure compliance with this section.

16 (e) Parties shall furnish to the attorney general, for the  
17 attorney general's approval, a brief report that identifies the  
18 proposed subject matter of the negotiations or discussions and  
19 contains an explanation of the efficiencies or benefits that are  
20 expected to be achieved through the collective mediation:



- 1           (1) The attorney general shall review whether the group of  
2           physicians represented is appropriate to present the  
3           interests involved in the mediation. The attorney  
4           general shall not approve the report if the group of  
5           physicians is not appropriate to represent the  
6           interests involved in the mediation or if the proposed  
7           mediation exceeds the authority granted in this  
8           chapter and, if the group is not appropriate or the  
9           mediation exceeds the granted authority, shall enter  
10          an order prohibiting any further collective mediation.  
11          The authorized third party shall provide supplemental  
12          information to the attorney general as new information  
13          becomes available that indicates that the subject  
14          matter of mediation with the health benefit plan has  
15          changed or will change;
- 16          (2) The group of physicians or their authorized third  
17          party, as the case may be, within fourteen days after  
18          receiving a health benefit plan's decision to decline  
19          to mediate or to terminate mediation, or within  
20          fourteen days after requesting mediation with a health



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1 benefit plan that fails to respond within that time  
2 period, shall report to the attorney general that  
3 mediation has ended or has been declined;

4 (3) During the mediation process, the group of physicians  
5 or their authorized third party, as the case may be,  
6 shall provide the attorney general upon the attorney  
7 general's request with a copy of all written  
8 communications that are between the physicians and the  
9 health benefit plan, that are relevant to the  
10 mediation, and that are in the possession of any  
11 authorized third party; and

12 (4) The authorized third party, before reporting the  
13 results of mediation with the health benefit plan and  
14 before giving the physicians an evaluation of any  
15 offer made by a health benefit plan, shall provide to  
16 the attorney general for the attorney general's  
17 approval a copy of all communications to be made to  
18 physicians related to the mediation, discussions, and  
19 health benefit plan offers.





1           (e) The attorney general shall either approve or  
2 disapprove the contract that was the subject of the collective  
3 negotiation within sixty days after receiving the reports  
4 required under subsection (d). If the contract is disapproved,  
5 the attorney general shall furnish a written explanation of any  
6 deficiencies along with a statement of specific remedial  
7 measures that would correct any identified deficiencies. An  
8 authorized third party who fails to obtain the attorney  
9 general's approval is considered to be acting outside the  
10 authority of this section.

11           (f) The attorney general shall approve the collective  
12 mediation contract if:

13           (1) The competitive and other benefits of the contract  
14 terms outweigh any anticompetitive effects; and

15           (2) The contract terms are consistent with other  
16 applicable laws and rules.

17           (g) A collective mediation contract shall include terms  
18 relating to the following:

19           (1) Restoration of the competitive balance in the market  
20 for healthcare services;



- 1           (2)    Protections for access to quality patient care;
- 2           (3)    Promotion of healthcare infrastructure and medical
- 3                    advancement; and
- 4           (4)    Improved communications between healthcare providers
- 5                    and healthcare insurers.

6           (h)    When weighing anticompetitive effects of contract  
7 terms, the attorney general shall consider whether the terms:

- 8           (1)    Provide for excessive payments; or
- 9           (2)    Contribute to unreasonable escalation of the cost of
- 10                   providing healthcare services.

11           (i)    This section does not authorize competing physicians  
12 to act in concert in response to a report issued by an  
13 authorized third party related to the authorized third party's  
14 decision or mediation with the health benefit plan. The  
15 authorized third party shall advise the physicians of the  
16 subject matter of this section and shall warn them of the  
17 potential for legal action against those who violate state or  
18 federal antitrust laws by exceeding the authority granted under  
19 this section.



1           (j) A contract allowed under this section may not exceed  
2 the term of five years.

3           (k) The documents relating to a collective negotiation  
4 described under this section that are in the possession of the  
5 department of the attorney general are confidential and shall  
6 not be open to public inspection under chapter 92F.

7           (l) Nothing in this section shall be construed to exempt  
8 the conduct of health care professionals or negotiations or  
9 agreements between health care professionals and a health  
10 benefit plan from the antitrust laws if the purpose or effect of  
11 the conduct, negotiations, or agreement would be, directly or  
12 indirectly, to exclude, limit the participation or reimbursement  
13 of, or otherwise limit the scope of services to be provided by  
14 separate or competing classes of health care professionals who  
15 practice or seek to practice within the scope of the  
16 occupational licenses held by the health care professionals.

17           § -4 Fee for registration of authorized parties. (a)  
18 The attorney general shall adopt rules pursuant to chapter 91  
19 that establish the amount and manner of payment of a  
20 registration fee for an authorized third party. The attorney



1 general shall establish the fee level so that the total amount  
2 of fees collected from authorized third parties approximately  
3 equals the actual regulatory costs for the oversight of joint  
4 negotiations between physicians and health benefit plans. The  
5 attorney general shall annually review the fee level to  
6 determine whether the regulatory costs are approximately equal  
7 to the fee revenues. If the review indicates that the fee  
8 revenues and regulatory costs are not approximately equal, the  
9 attorney general shall calculate fee adjustments and adopt rules  
10 pursuant to chapter 91 to implement the adjustments. In January  
11 of each year, the attorney general shall report on the fee level  
12 and revisions from the previous year to the governor.

13 (b) As used in this section, "regulatory costs" means  
14 costs of the department of the attorney general that are  
15 attributable to oversight of joint negotiations between  
16 physicians and health benefit plans.

17 § -5 Rules. Notwithstanding section -4, the attorney  
18 general may adopt rules in accordance with chapter 91 as  
19 necessary to implement this chapter."



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1 SECTION 2. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 3. This Act shall take effect upon its approval.  
5

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**Report Title:**

Physicians; Collective Mediation; Health Benefit Plans

**Description:**

Authorizes physicians to engage in collective mediation with health benefit plans.

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