

1 **E2SSB 5304** - H AMD TO REV COMM AMD (5304-S2.E AMH REV H2235.7)
2 **000399 ADOPTED 4-8-93**

3 By Representatives Dellwo and Flemming, Rust, and L. Johnson

4 On page 129, line 30, strike Section 429 in its entirety and
5 insert the following:

6 "NEW SECTION. **Sec. 429.** CONTRACTS BETWEEN CERTIFIED HEALTH
7 PLANS AND HEALTH CARE PROVIDERS. (1) Balancing the need for health
8 care reform and the need to protect health care providers, as a
9 class and as individual providers, from improper exclusion presents
10 a problem that can be satisfied with the creation of a process to
11 ensure fair consideration of the inclusion of health care providers
12 in managed care systems operated by certified health plans. It is
13 therefore the intent of the legislature that the health services
14 commission in developing rules in accordance with this section and
15 the attorney general in monitoring the level of competition in the
16 various geographic markets, balance the need for cost-effective and
17 quality delivery of health services with the need for inclusion of
18 both individual health care providers and classes of health care
19 providers in managed care programs developed by certified health
20 plans.

21 (2) All licensed health care providers licensed by the state,
22 irrespective of the type or kind of practice, should be afforded
23 the opportunity for inclusion in certified health plans consistent
24 with the goals of health care reform.

25 The health services commission shall adopt rules requiring
26 certified health plans to publish general criteria for the plan's
27 selection or termination of health care providers. Such rules shall
28 not require the disclosure of criteria deemed by the plan to be of
29 a proprietary or competitive nature that would hurt the plan's
30 ability to compete or to manage health services. Disclosure of
31 criteria is proprietary or anticompetitive if revealing the

1 criteria would have the tendency to cause health care providers to
2 alter their practice pattern in a manner that would harm efforts to
3 contain health care costs and is proprietary if revealing the
4 criteria would cause the plan's competitors to obtain valuable
5 business information.

6 If a certified health plan uses unpublished criteria to judge
7 the quality and cost-effectiveness of a health care provider's
8 practice under any specific program within the plan, the plan may
9 not reject or terminate the provider participating in that program
10 based upon such criteria until the provider has been informed of
11 the criteria that his or her practice fails to meet and is given a
12 reasonable opportunity to conform to such criteria.

13 (3)(a) Whenever a determination is made under subsection (b)
14 that a plan's share of the market reaches a point where the plan's
15 exclusion of health care providers from a program of the plan would
16 result in the substantial inability of providers to continue their
17 practice thereby unreasonably restricting consumer access to needed
18 health services or whenever a certified health plan is the only
19 plan within the relevant market, the certified health plan must
20 allow all providers within the affected market to participate in
21 the programs of the certified health plan. All such providers must
22 meet the published criteria and requirements of the programs.

23 (b) The attorney general with the assistance of the insurance
24 commissioner shall periodically analyze the market power of
25 certified health plans to determine when the market share of any
26 program of a certified health plan reaches a point where the plan's
27 exclusion of health service providers from a program of the plan
28 would result in the substantial inability of providers to continue
29 their practice thereby unreasonably restricting consumer access to
30 needed health services. In analyzing the market power of a
31 certified health plan, the attorney general shall consider:

32 (i) The ease with which providers may obtain contracts with
33 other plans;

1 (ii) The amount of the private pay and government employer
2 business that is controlled by the certified health plan taking
3 into account the selling of its provider network to self-insured
4 employer plans;

5 (iii) The difficulty in establishing new competing plans in
6 the relevant geographic market; and

7 (iv) The sufficiency of the number or type of providers under
8 contract with the plan available to meet the needs of plan
9 enrollees.

10 Notwithstanding the provisions of this subsection, if the
11 certified health plan demonstrates to the satisfaction of the
12 attorney general that health service utilization data and similar
13 information shows that the inclusion of additional health service
14 providers would substantially lessen the plan's ability to control
15 health care costs and that the plan's procedures for selection of
16 providers are not improperly exclusive of providers, the plan need
17 not include additional providers within the plan's program.

18 (4) The health services commission shall adopt rules for the
19 resolution of disputes between providers and certified health plans
20 including disputes regarding the decision of a plan not to include
21 the services of a provider.

22 (5) Nothing contained in this section shall be construed to
23 require a plan to allow or continue the participation of a provider
24 if the plan is a federally qualified health maintenance
25 organization and the participation of the provider or providers
26 would prevent the health maintenance organization from operating as
27 a health maintenance organization in accordance with 42 U.S.C Sec.
28 300e."

EFFECT: Several technical amendments are made and various subsections are simplified and reordered for clarity. The intent section is changed to remove language suggesting that not all providers offer quality health care. Certified health plans may not reject providers based upon unpublished criteria

until the plan has informed the provider of the criteria and given the provider the opportunity to comply. The health services commission is given authority to adopt rules with respect to the resolution of disputes between certified health plans and health care providers instead of the insurance commissioner. Standards are created for attorney general review of certified health plan market power and its affects upon health care providers.