

1 **E2SSB 5304** - H AMD TO REV COMM AMD (5304-S2.E AMH REV H2235.7)
2 **000398 ADOPTED 4-8-93**

3 By Representatives Dellwo, Flemming, & Johnson L.

4 Beginning on page 142, line 6, strike sections 446 and 447 in
5 their entirety and insert the following:

6 "NEW SECTION. **Sec. 446.** MANAGED COMPETITION FINDINGS AND
7 INTENT. (1) The legislature recognizes that competition among
8 health care providers, facilities, payers, and purchasers will
9 yield the best allocation of health care resources, the lowest
10 prices for health care, and the highest quality of health care when
11 there exists a large number of buyers and sellers, easily
12 comparable health care plans and services, minimal barriers to
13 entry and exit into the health care market, and adequate
14 information for buyers and sellers to base purchasing and
15 production decisions. However, the legislature finds that
16 purchasers of health care services and health care coverage do not
17 have adequate information upon which to base purchasing decisions;
18 that health care facilities and providers of health care services
19 face legal and market disincentives to develop economies of scale
20 or to provide the most cost-efficient and efficacious service; that
21 health insurers, contractors, and health maintenance organizations
22 face market disincentives in providing health care coverage to
23 those Washington residents with the most need for health care
24 coverage; and that potential competitors in the provision of health
25 care coverage bear unequal burdens in entering the market for
26 health care coverage.

27 (2) The legislature therefore intends to exempt from state
28 anti-trust laws, and to provide immunity from federal anti-trust
29 laws through the state action doctrine for activities approved
30 under this chapter which might otherwise be constrained by such
31 laws and intends to displace competition in the health care market:

1 to contain the aggregate cost of health care services; to promote
2 the development of comprehensive, integrated, and cost-effective
3 health care delivery systems through cooperative activities among
4 health care providers and facilities; to promote comparability of
5 health care coverage; to improve the cost-effectiveness in
6 providing health care coverage relative to health promotion,
7 disease prevention, and the amelioration or cure of illness; to
8 assure universal access to a publicly determined, uniform package
9 of health care benefits; and to create reasonable equity in the
10 distribution of funds, treatment, and medical risk among purchasers
11 of health care coverage, payers of health care services, providers
12 of health care services, health care facilities, and Washington
13 residents. To these ends, any lawful action taken pursuant to
14 chapter . . . , Laws of 1993 (this act) by any person or entity
15 created or regulated by chapter . . . , Laws of 1993 (this act)
16 are declared to be taken pursuant to state statute and in
17 furtherance of the public purposes of the state of Washington.

18 (3) The legislature does not intend and unless explicitly
19 permitted in accordance section 447 of this act or under rules
20 adopted pursuant to chapter . . . , Laws of 1993 (this act), does
21 not authorize any person or entity to engage in activities or to
22 conspire to engage in activities that would constitute per se
23 violations of state and federal anti-trust laws including but not
24 limited to conspiracies or agreements:

25 (a) Among competing health care providers not to grant
26 discounts, not to provide services, or to fix the price of their
27 services;

28 (b) Among certified health plans as to the price or level of
29 reimbursement for health care services;

30 (c) Among certified health plans to boycott a group or class
31 of health care service providers;

32 (d) Among purchasers of certified health plan coverage to
33 boycott a particular plan or class of plans;

1 (e) Among certified health plans to divide the market for
2 health care coverage; or

3 (f) Among certified health plans and purchasers to attract or
4 discourage enrollment of any Washington resident or groups of
5 residents in a certified health plan based upon the perceived or
6 actual risk of loss in including such resident or group of
7 residents in a certified health plan or purchasing group.

8 NEW SECTION. Sec. 447. COMPETITIVE OVERSIGHT AND ANTI-TRUST
9 IMMUNITY. (1) A certified health plan, health care facility,
10 health care provider, or other person involved in the development,
11 delivery, or marketing of health care or certified health plans may
12 request, in writing, that the attorney general issue an informal
13 opinion as to whether particular conduct is authorized by chapter
14 . . . , Laws of 1993 (this act). The attorney general shall issue
15 such opinion within thirty days of receipt of a written request for
16 an opinion or within thirty days of receipt of any additional
17 information requested by the attorney general necessary for
18 rendering an opinion. If the attorney general concludes that such
19 conduct is not authorized by chapter . . . , Laws of 1993 (this
20 act), the person or organization making the request may petition
21 the commission for review and approval of such conduct in
22 accordance with subsection (3) of this section.

23 (2) With the approval of the attorney general, the health
24 services commission:

25 (a) May authorize conduct by a certified health plan, health
26 care facility, health care provider, or any other person that could
27 tend to lessen competition in the relevant market upon a strong
28 showing that the conduct is likely to achieve the policy goals of
29 chapter . . . , Laws of 1993 (this act) and a more competitive
30 alternative is impractical;

31 (b) Shall adopt rules governing conduct among providers,
32 health care facilities, and certified health plans including rules

1 governing provider and facility contracts with certified health
2 plans, rules governing the use of "most favored nation" clauses and
3 exclusive dealing clauses in such contracts, and rules providing
4 that certified health plans in rural areas contract with a
5 sufficient number and type of health care providers and facilities
6 to ensure consumer access to local health care services;

7 (c) Shall adopt rules permitting health care providers within
8 the service area of a plan to collectively negotiate the terms and
9 conditions of contracts with a certified health plan including the
10 ability of providers to meet and communicate for the purposes of
11 these negotiations; and

12 (d) Shall adopt rules governing cooperative activities among
13 health care facilities and providers.

14 (3) A certified health plan, health care facility, health care
15 provider, or any other person involved in the development,
16 delivery, and marketing of health services or certified health
17 plans may file a written petition with the commission requesting
18 approval of conduct that could tend to lessen competition in the
19 relevant market. Such petition shall be filed in a form and manner
20 prescribed by rule of the commission.

21 The commission shall issue a written decision approving or
22 denying a petition filed under this section within ninety days of
23 receipt of a properly completed written petition. The decision
24 shall set forth findings as to benefits and disadvantages and
25 conclusions as to whether the benefits outweigh the disadvantages.

26 (4) In authorizing conduct and adopting rules of conduct under
27 this section, the commission with the advice of the attorney
28 general, shall consider the benefits of such conduct in furthering
29 the goals of health care reform including but not limited to:

30 (a) Enhancement of the quality of health services to
31 consumers,

32 (b) Gains in cost efficiency of health services,

1 (c) Improvements in utilization of health services and
2 equipment,

3 (d) Avoidance of duplication of health services resources; or

4 (e) And as to subsections (2)(b) and (c), (i) facilitates the
5 exchange of information relating to performance expectations; (ii)
6 simplifies the negotiation of delivery arrangements and
7 relationships, and (iii) reduces the transactions costs on the part
8 of certified health plans and providers in negotiating more cost
9 effective delivery arrangements.

10 These benefits must outweigh disadvantages including and not
11 limited to:

12 (i) Reduced competition among certified health plans, health
13 care providers, or health care facilities,

14 (ii) Adverse impact on quality, availability or price of
15 health care services to consumers, or

16 (iii) The availability of arrangements less restrictive to
17 competition that achieve the same benefits.

18 (5) Conduct authorized by the commission shall be deemed taken
19 pursuant to state statute and in the furtherance of the public
20 purposes of the state of Washington.

21 (6) With the assistance of the attorney general's office, the
22 commission shall actively supervise any conduct authorized under
23 this section to determine whether such conduct or rules permitting
24 certain conduct should be continued and whether a more competitive
25 alternative is practical. The commission shall periodically review
26 petitioned conduct through at least, annual progress reports from
27 petitioners, annual or more frequent reviews by the commission
28 which evaluate whether the conduct is consistent with the petition
29 and whether the benefits continue to outweigh any disadvantages. If
30 the commission determines that the likely benefits of any conduct
31 approved through rule, petition, or otherwise by the commission no
32 longer outweigh the disadvantages attributable to potential
33 reduction in competition, the commission shall order a modification

1 or discontinuance of such conduct. Conduct ordered discontinued by
2 the commission shall no longer be deemed to be taken pursuant to
3 state statute and in the furtherance of the public purposes of the
4 state of Washington.

5 (7) Nothing contained in chapter . . ., Laws of 1993 (this
6 act) is intended to in any way limit the ability of rural hospital
7 districts to enter into cooperative agreements and contracts
8 pursuant to RCW 70.44.450 and chapter 39.34 RCW."

EFFECT: Several technical amendments are made and various subsections are reordered for clarity. The commission must render a decision within ninety days of the filing of a petition for authorization of conduct that may tend to lessen competition. The oversight responsibilities of the commission are described in greater detail. A new subsection is added to preserve cooperative agreements by rural hospital districts authorized under other statutes.