

2 **ESHB 1589** - S AMD TO HEA COMM AMD (S-3032.2/95) - 397  
3 By Senators Moyer, Deccio & Quigley

4 ADOPTED 4/14/95

5 On page 2, after line 5, insert the following:

6 "NEW SECTION. **Sec. 3.** MANAGED COMPETITION--FINDINGS AND INTENT.

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

24 (2) The legislature therefore intends to exempt from state anti-  
25 trust laws, and to provide immunity from federal anti-trust laws  
26 through the state action doctrine for activities approved under this  
27 chapter that might otherwise be constrained by such laws and intends to  
28 displace competition in the health care market: To contain the  
29 aggregate cost of health care services; to promote the development of  
30 comprehensive, integrated, and cost-effective health care delivery  
31 systems through cooperative activities among health care providers and  
32 facilities; to promote comparability of health care coverage; to  
33 improve the cost-effectiveness in providing health care coverage  
34 relative to health promotion, disease prevention, and the amelioration  
35 or cure of illness; to assure universal access to a publicly  
36 determined, standard package of health care benefits; and to create

1 reasonable equity in the distribution of funds, treatment, and medical  
2 risk among purchasers of health care coverage, payers of health care  
3 services, providers of health care services, health care facilities,  
4 and Washington residents. To these ends, any lawful action taken  
5 pursuant to chapter 492, Laws of 1993, by any person or entity created  
6 or regulated by chapter 492, Laws of 1993, are declared to be taken  
7 pursuant to state statute and in furtherance of the public purposes of  
8 the state of Washington.

9 (3) The legislature does not intend and unless explicitly permitted  
10 in accordance with section 4 of this act or under rules adopted  
11 pursuant to chapter 492, Laws of 1993, does not authorize any person or  
12 entity to engage in activities or to conspire to engage in activities  
13 that would constitute per se violations of state and federal anti-trust  
14 laws including but not limited to conspiracies or agreements:

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

17 (b) Among health carriers as to the price or level of reimbursement  
18 for health care services;

19 (c) Among health carriers to boycott a group or class of health  
20 care service providers;

21 (d) Among purchasers of health plans to boycott a particular  
22 carrier or class of carriers;

23 (e) Among health carriers to divide the market for health care  
24 coverage; or

25 (f) Among health carriers and purchasers to attract or discourage  
26 enrollment of any Washington resident or groups of residents in a  
27 health carrier based upon the perceived or actual risk of loss in  
28 including such resident or group of residents in a health carrier or  
29 subscriber purchasing group.

30 NEW SECTION. **Sec. 4.** MANAGED COMPETITION--COMPETITIVE OVERSIGHT--  
31 ATTORNEY GENERAL DUTIES--ANTI-TRUST IMMUNITY. (1) A health carrier,  
32 health care facility, health care provider, or other person involved in  
33 the development, delivery, or marketing of health care or health plans  
34 may request, in writing, that the insurance commissioner obtain an  
35 informal opinion from the attorney general as to whether particular  
36 conduct is lawful under federal and state anti-trust and similar  
37 statutes. Trade secret or proprietary information contained in a  
38 request for informal opinion shall be identified as such and shall not

1 be disclosed other than to an authorized employee of the insurance  
2 commissioner or attorney general without the consent of the party  
3 making the request, except that information in summary or aggregate  
4 form and market share data may be contained in the informal opinion  
5 issued by the attorney general. The attorney general shall issue such  
6 opinion within thirty days of receipt of a written request for an  
7 opinion or within thirty days of receipt of any additional information  
8 requested by the attorney general necessary for rendering an opinion  
9 unless extended by the attorney general for good cause shown. If the  
10 attorney general concludes that such conduct is not lawful, the person  
11 or organization making the request may petition the commissioner for  
12 review and approval of such conduct in accordance with subsection (3)  
13 of this section.

14 (2) After obtaining the written opinion of the attorney general and  
15 subject to the approval of the attorney general, the insurance  
16 commissioner:

17 (a) May authorize conduct by a health carrier, health care  
18 facility, health care provider, or any other person that could tend to  
19 lessen competition in the relevant market upon a strong showing that  
20 the conduct is likely to achieve the policy goals of health care reform  
21 and a more competitive alternative is impractical;

22 (b) Shall adopt rules governing conduct among providers, health  
23 care facilities, and health carriers including rules governing provider  
24 and facility contracts with health carriers, rules governing the use of  
25 "most favored nation" clauses and exclusive dealing clauses in such  
26 contracts, and rules providing that health carriers offering managed  
27 care health plans in rural areas contract with a sufficient number and  
28 type of health care providers and facilities to ensure consumer access  
29 to local health care services;

30 (c) Shall adopt rules permitting health care providers within the  
31 service area of a plan to collectively negotiate the terms and  
32 conditions of contracts with the carrier including the ability of  
33 providers to meet and communicate for the purposes of these  
34 negotiations; and

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

37 (3) A health carrier, health care facility, health care provider,  
38 or any other person involved in the development, delivery, and  
39 marketing of health services or health plans may file a written

1 petition with the insurance commissioner requesting approval of conduct  
2 that could tend to lessen competition in the relevant market. Such  
3 petition shall be filed in a form and manner prescribed by rule of the  
4 insurance commissioner. Trade secret or proprietary information  
5 contained in a written petition shall be identified as such and shall  
6 not be disclosed other than to an authorized employee of the  
7 commissioner or the attorney general without the consent of the party  
8 filing the written petition, except that information in summary or  
9 aggregate form and market share data may be contained in the written  
10 decision issued by the commissioner.

11 Subject to the approval of the attorney general, the insurance  
12 commissioner shall issue a written decision approving or denying a  
13 petition filed under this section within ninety days of receipt of a  
14 properly completed written petition unless extended by the commissioner  
15 for good cause shown. The decision shall set forth findings as to  
16 benefits and disadvantages and conclusions as to whether the benefits  
17 outweigh the disadvantages.

18 (4)(a) In authorizing conduct and adopting rules of conduct under  
19 this section, the insurance commissioner with the advice of the  
20 attorney general, shall consider the benefits of such conduct in  
21 furthering the goals of health care reform including but not limited  
22 to:

23 (i) Enhancement of the quality of health services to consumers;  
24 (ii) Gains in cost-efficiency of health services;  
25 (iii) Improvements in utilization of health services and equipment;  
26 (iv) Avoidance of duplication of health services resources; or  
27 (v) And as to (a) (ii) and (iii) of this subsection: (A)  
28 Facilitates the exchange of information relating to performance  
29 expectations; (B) simplifies the negotiation of delivery arrangements  
30 and relationships; and (C) reduces the transactions costs on the part  
31 of health carriers and providers in negotiating more cost-effective  
32 delivery arrangements.

33 (b) These benefits must outweigh disadvantages including and not  
34 limited to:

35 (i) Reduced competition among health carriers, health care  
36 providers, or health care facilities;

37 (ii) Adverse impact on quality, availability, or price of health  
38 care services to consumers; or

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

3 (5) Conduct authorized by the insurance commissioner shall be  
4 deemed taken pursuant to state statute and in the furtherance of the  
5 public purposes of the state of Washington.

6 (6) With the assistance of the attorney general's office, the  
7 insurance commissioner shall actively supervise any conduct authorized  
8 under this section to determine whether such conduct or rules  
9 permitting certain conduct should be continued and whether a more  
10 competitive alternative is practical. The commissioner shall  
11 periodically review petitioned conduct through, at least, annual  
12 progress reports from petitioners, annual or more frequent reviews by  
13 the commissioner that evaluate whether the conduct is consistent with  
14 the petition, and whether the benefits continue to outweigh any  
15 disadvantages. Subject to the advice and approval of the attorney  
16 general, the commissioner may determine that the likely benefits of any  
17 conduct approved through rule, petition, or otherwise by the  
18 commissioner no longer outweigh the disadvantages attributable to  
19 potential reduction in competition and the commissioner shall order a  
20 modification or discontinuance of such conduct. Conduct ordered  
21 discontinued by the commissioner shall no longer be deemed to be taken  
22 pursuant to state statute and in the furtherance of the public purposes  
23 of the state of Washington.

24 (7) Nothing contained in this act is intended to in any way limit  
25 the ability of rural hospital districts to enter into cooperative  
26 agreements and contracts pursuant to RCW 70.44.450 and chapter 39.34  
27 RCW."

28 Renumber remaining sections consecutively and correct internal  
29 references.

30 EFFECT OF AMENDMENT: Retains anti-trust state action immunity  
31 provisions of 1993 Health Services Act with the following changes:  
32 Regulatory authority is transferred to the Insurance Commissioner;  
33 however, the attorney general must approve any action or rule by the  
34 commissioner. Trade secrets and proprietary information filed by  
35 businesses seeking approval for certain activity may be disclosed under  
36 very limited circumstances. Technical corrections are made to reflect  
37 the repeal of the certified health plan language.

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