

# Senate OKs letting doctors bargain collectively

**No action in Assembly; business groups lobby against the legislation**

**By WILL ASTOR**

Lost amid the contentious debates over same-sex marriage and a property tax cap, the state Senate passed a bill last week that would let physicians form groups to bargain collectively with insurance companies.

Passed June 22 by a 43-19 vote, the Health Care Consumer and Provider Protection Act would significantly change health care in New York by giving doctors more clout and weakening insurers' ability to set rules for how care is delivered.

Backers paint the bill as a badly needed

measure that would put overburdened doctors on a more equal footing with powerful insurance companies. Opponents see it as likely to add to growing health care costs.

Long sought by the state's doctors in private practice, similar measures have been proposed in the Legislature for years. The Senate approval is the first time either house has passed a physician negotiation bill. However, a companion bill in the Assembly did not come to a vote.

Under the bill, doctors would be able to form collective bargaining groups under limited conditions. Such groups would be allowed, for example, in regions where a few insurance companies control most of the market. Agreements reached between insurance companies and physician groups would be subject to the approval of the state attorney general.

The Senate bill's chief sponsor, Sen. Kemp Hannon, R-Garden City, said the measure is needed to maintain the state's dwindling pool of primary-care doctors as New York gets ready to add 1 million newly insured individuals to its patient population with the enactment of federal health care reform. Without his bill, the state's shortage of doctors would get worse, Hannon warned.

Lacking such legislation, U.S. doctors are prohibited by federal antitrust law from collective bargaining with insurance companies.

As the Justice Department sees the physician-insurance company relationship, doctors are merchants selling a service and third-party payers are their customers. Any agreement among doctors on rates is price fixing.

In practice, insurers hold nearly all the cards in setting rates, said Morris Auster, counsel to the Medical Society of the State

of New York's government affairs division. The ability to negotiate with insurance carriers would balance physicians' now lopsided dealings with insurers, he maintained.

Private-practice doctors, whose revenues mostly come from private insurance payments, have lost ground financially for at least a decade, Auster said. While some insurers occasionally have raised physician payments, reimbursements have not kept pace with overhead costs, he said. If doctors cannot bargain for better payments, many will be forced out of business.

Money is not the only issue, Auster said. Doctors' ability to practice is hampered by prior-authorization requirements and other rules imposed by insurers, often with little physician input.

Rochester-area doctors are particularly disadvantaged, Hannon argued in a Senate floor speech last week.

"What's happened in markets like Syracuse and Rochester where two plans control more than 85 percent of the market is that physicians are left without recourse when it comes to conditions of how they relate," he said.

Largely because of the poor economics of running a practice, primary-care doctors for adults are in ever shorter supply locally, said Nancy Adams, executive director of the Montroe County Medical Society. Some 44 percent of area primary-care practices have stopped taking new patients.

Surveys done by the society indicate that as older physicians retire or doctors relocate to regions where they think pay and working conditions will be better, fewer young doctors are replacing them, Adams added.

"It's about the money," she said. "That's

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why fewer medical students are going into primary care. They look at the reimbursement rates and see that other specialties pay better."

Though such concerns may be valid, opponents say, they are overshadowed by one factor: Higher pay for doctors would mean higher insurance premiums.

"I agree with Sen. Hannon that many changes are affecting health care and the proper balance between physicians and insurers is an issue worthy of discussion. But this particular bill at this particular time is ill-advised," said Sen. James Seward, R-Milford, Otsego County.

In voting against the bill, Seward cited nearly universal opposition among business groups, including Unshackle Upstate and the Rochester Business Alliance Inc. "Employers have consistently told us that health care costs are among their top concerns," RBA president and CEO Sandra Parker said this week. "We are against anything that would raise premiums."

Auster disputed that the bill would result automatically in premium hikes.

"It would more shift costs than raise them," he said.

If insurers cut profits and executive salaries, higher physician reimbursements would not have to raise premiums, Auster maintained.

That would not be likely to happen, Parker said. Similar measures have been discussed nationally and were found to be unworkable, she said. A study conducted by the Health Insurance Association of America found that physician collective bargaining would result in a 6 percent to 11 percent rise in premiums.

Leslie Moran, a spokeswoman for the New York Health Plan Association Inc., an insurance trade group based in Albany, rejected the claim that doctors are at the mercy of insurance companies. It is often the other way around, or at least the playing field is closer to level than doctors describe, she said.

State law requires insurers to maintain adequate provider panels. Sufficiently large practice groups, which can effectively speak for many physicians, can and do force insurance companies to bend to their will, Moran said.

While insurance companies and business groups might be expected to oppose such legislation, two pro-consumer groups—the New York Public Interest Research Group and the Center for Medical Consumers—

also have spoken against it, Moran added. "Our organizations oppose this legislation because it would empower health care professionals to use their collective power in ways that are not in the best interest of the public," the groups said in a joint statement on the Senate measure.

Rather than giving doctors more clout, the state should concentrate on laws that would directly target insurance industry abuses, the consumer organizations said.

### **Two consumer groups argue that the state should address abuses within the insurance industry directly rather than increasing the bargaining clout of doctors.**

For the bill to become law, the Assembly would have to reconvene, put its collective bargaining bill to a vote and pass it within the next five months.

The Senate, which failed to pass an insurance exchange bill last week, is due to reconvene in several weeks.

If a Senate insurance exchange bill does not match an Assembly bill passed last week, Auster said, the Assembly would

have to reconvene as well, providing an opportunity to act on the collective bargaining bill. Should the Assembly reconvene, he said, the bill's chances there would be good.

Sixty Assembly members, including Insurance Committee chairman Joseph Morelle, D-Irondequoit, and Harry Bronson, D-Rochester, have signed on to the Assembly bill, Auster said.

In lobbying sessions with the local Assembly delegation, only Assemblyman David Gantt, D-Rochester, voiced strong opposition, Adams said.

The Assembly bill's primary sponsor, Assemblyman Ron Canestrari, D-Albany, and Morelle did not return calls.

If the Assembly does not take up the bill by the governor's next State of the State address in early January, it would need to be reintroduced in the Senate and the Assembly.

Gov. Andrew Cuomo has not publicly stated a position on the Senate measure, so it is unclear if he would sign such a bill.

In the roll call vote last week, most Rochester-area lawmakers did not favor the Senate bill.

Sen. George Maziarz, R-Newfane, voted for it. Sens. Joseph Robach, R-Greece, Michael Nozzolo, R-Seneca Falls, and James Alesi, R-Perinton, voted no.

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