BILL NUMBER: S1157

SPONSOR: HANNON

TITLE OF BILL: An act to amend the public health law, in relation to requirements for collective negotiations by health care providers with certain health benefit plans

PURPOSE:

This bill is designed to restore fairness in the contracting process between health care providers and large managed care plans by allowing such providers to join together to negotiate contract provisions. This legislation would not authorize strikes of health benefit plans by health care providers.

SUMMARY OF PROVISIONS:

Section 1 is a statement of legislative intent that states that the legislature finds it appropriate and necessary to authorize collective negotiations on patient care issues and on fee-related and other issues where it determines that health plans have an undue advantage negotiating the terms of contracts with health care providers. The legislative intent clarifies that the act is not intended to apply or affect collective bargaining relationships involving health care providers who are employees or rights relating to collective bargaining arising under applicable federal/state collective bargaining statutes.

Section 2 cites the bill as the Health Care Consumer and Provider Protection Act.

Section 3 amends article 49 to the public health law by adding a new title 111 titled Collective Negotiations by Health Care Providers with Health Care Plans.

This legislation authorizes collective bargaining for independent contractor health care providers including physicians. This bill would create a system under which the state would closely monitor those negotiations, and any negotiations involving fee-related matters would only be permitted when an individual managed care plan controls a substantial share of the managed care market. The Commissioner of Health would be authorized to approve the health care providers' representative request to negotiate based upon the benefits to be achieved for providers and consumers of health services, and is required to review any offer submitted to the health care providers' representative prior to sharing with affected health care providers. The legislation would also create a mechanism for resolving disputes when there is an impasse or when the health plan refuses to negotiate. The bill would also direct the Commissioner of Health with input from the Superintendent of Insurance and the Attorney General to approve any final agreement as well as monitor the implemented agreements to ensure continued compliance with the law. Importantly, this legislation would not authorize strikes or concerted action by health care providers in response to negotiations with health care plans.

Section 4. This act shall take effect 120 days after it shall have become a law, provided that the department of health may promulgate and establish any regulations pursuant hereto prior to the effective date.
Currently, federal antitrust laws prohibit individual health care providers from collectively negotiating any provisions of contracts they sign with managed care entities. This bill would allow health care providers in New York State to conduct some collective negotiations by creating a system under which the state would closely monitor those negotiations, facilitate resolution of negotiation impasses, and actively monitor implementation of agreements. Negotiations involving fee-related matters would be prohibited unless an individual managed care plan controls a substantial share of the managed care market.

Giving health care providers greater ability to advocate for patients in contract negotiations is critical since large health maintenance organizations control huge shares of the health insurance market, both in New York and across the country. In the last few years we have seen the mergers of United Healthcare and Oxford, MVP and Preferred Care, and Wellpoint with Wellchoice (Empire). As of March 2008, almost 75% of the enrollees in managed care plans in New York State were enrolled in just five health plans (GM/HIP, United/Oxford/Amerchoice, Excellus, Empire and MVP/Preferred Care). We have also seen an emerging trend of long-time not-for-profit health insurance companies such as Empire and HIP seeking to convert to for-profit status.

Due to the current imbalance of negotiating power in favor of the managed care plans, physicians and other health care providers are offered take-it-or-leave-it contracts by health plans that significantly hamper their ability to provide quality patient care. These contracts permit burdensome processes and unjustifiably long wait times for obtaining pre-authorization to provide needed patient care; impose limitations on whom a physician or other health care provider may refer a patient for necessary care; permit demands for refunds of payments long after the time that such payments were originally made; permit health plans to make major changes to key elements of a contract without physician or other health care provider consent; and cede to physicians and other health care providers the legal consequences for patients harmed by health plan utilization review decisions.

This bill, by allowing independent contractor physicians and health care providers to conduct some collective negotiations while being closely monitored by the state, would give physicians and health care providers greater ability to advocate for patients in contract negotiations. This bill would create a system under which the state would closely monitor those negotiations, and any negotiations involving fee-related matters would only be permitted when an individual managed care plan controls a substantial share of the managed care market. This legislation would not authorize strikes or boycotts of health benefit plans by physicians.

**LEGISLATIVE HISTORY:**

S.3690 of 2014.

**FISCAL IMPLICATIONS:**

None to the State. The bill would provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**EFFECTIVE DATE:**

120 days after it shall have become a law, provided that the department of health may promulgate and establish any regulations pursuant hereto prior to the effective date.