

1 AN ACT concerning joint discussions between physicians,
2 health care providers, and health care plans.

3 Be it enacted by the People of the State of Illinois,
4 represented in the General Assembly:

5 Section 1. Short title. This Act may be known as the
6 Health Care Services Contract Joint Discussions Act.

7 Section 5. Findings and purpose.

8 (a) The General Assembly finds that it is important for
9 health care plans and health care providers to work together
10 for the benefit of the citizens of the State. Health care
11 plans and health care providers must work cooperatively to
12 ensure enrollees receive quality health care services.

13 (b) The General Assembly finds that cooperation between
14 health care plans and health care providers often is lacking,
15 and this is to the detriment of enrollees. This occurs in
16 instances in which health care plans dominate the health care
17 financing market to such a degree that fair discussions
18 between health care providers and the health care plans are
19 unobtainable absent any joint action on behalf of health care
20 providers. In these instances, health care plans have the
21 ability to unilaterally issue the terms and conditions of the
22 contracts they offer health care providers, and many of the
23 contract terms and conditions being unilaterally issued to
24 health care providers directly impact the accessibility of
25 care and quality of care delivered to enrollees under those
26 contracts. Health care plans also control the health care
27 services rendered to enrollees through utilization review
28 programs and other managed care tools and associated coverage
29 and payment policies.

30 (c) The General Assembly finds that in most instances
31 health care providers currently cannot join together to

1 discuss contract terms and conditions and that current
2 mechanisms that bring health care providers together into
3 contracting organizations, such as physician hospital
4 organizations, independent practice associations, and group
5 practices, do not provide health care providers with an
6 adequate voice in discussing contract terms and conditions.

7 (d) The General Assembly finds that joint discussions by
8 competing health care providers of these terms and conditions
9 of contracts with health care plans will result in
10 procompetitive effects, in the absence of any express or
11 implied threat of retaliatory joint action, such as a boycott
12 or strike, by health care providers, and will protect
13 enrollees from terms and conditions that may have an adverse
14 impact on the accessibility of care and quality of care
15 received by those enrollees. Empowering competing health
16 care providers to hold joint discussions with health care
17 plans as provided in this Act will help restore the
18 competitive balance between health care providers and health
19 care plans and improve competition in the markets for health
20 care services in this State, thereby providing benefits for
21 consumers, health care providers, and less dominant health
22 care plans.

23 (e) The General Assembly finds that joint discussions
24 over fee-related terms and conditions may in some
25 circumstances yield anticompetitive effects. Consequently,
26 the General Assembly finds it appropriate and necessary to
27 limit joint discussions on fee-related issues to those
28 instances where it is determined that significant imbalances
29 exist.

30 (f) The General Assembly finds that this Act is
31 necessary and proper and constitutes an appropriate exercise
32 of the authority of this State to regulate the business of
33 insurance and the delivery of health care services. It is
34 the intention of the General Assembly to authorize health

1 care providers to hold joint discussions with health care
2 plans and to qualify those joint discussions and related
3 joint activities for the State-action exemption to the
4 federal antitrust laws through the articulated State policy
5 and active supervision provided in this Act.

6 Section 10. Definitions.

7 "Attorney General" means the Attorney General of the
8 State of Illinois.

9 "Board" means the Health Care Services Contracting Board.

10 "Department" means the Department of Insurance.

11 "Enrollee" means any person and his or her dependents
12 enrolled in or covered by a health care plan.

13 "Health care plan" means any of the following that
14 contract with a health care provider for the delivery or
15 provision of health care services:

16 (1) companies offering accident and health
17 insurance;

18 (2) health maintenance organizations;

19 (3) preferred provider organizations;

20 (4) workers' compensation insurance;

21 (5) third party administrators; and

22 (6) state health insurance and municipal health
23 insurance plans.

24 For purposes of this definition, "health care plan" does
25 not include a Medicare supplemental policy as defined by
26 Section 1882(g)(1), Social Security Act (42 U.S.C. Section
27 1395ss), as amended.

28 "Health care provider" means any physician, dentist,
29 podiatrist, hospital, facility, or person that is licensed or
30 otherwise authorized to deliver health care services.

31 "Health care services" means any service included in the
32 furnishing to any individual of medical care, or the
33 hospitalization incident to the furnishing of such care, as

1 well as the furnishing to any person of any and all other
2 services for the purpose of preventing, alleviating, curing,
3 or healing human illness, condition, or injury.

4 "Member" means a health care provider or group of health
5 care providers who have authorized a joint discussion
6 representative to enter into joint discussions on their
7 behalf.

8 "Offeror" means any health care plan offering a contract.

9 "Person" means any corporation, association, partnership,
10 limited liability company, sole proprietorship, or any other
11 legal entity.

12 "Joint discussion representative" means a person
13 authorized under this Act to (i) collectively discuss,
14 consider, and comment to, and advise health care providers
15 and groups of health care providers on the terms and
16 conditions of proposed contracts for the provision of health
17 care services offered to such health care providers and
18 groups of health care providers and (ii) discuss and confer
19 with offerors of such contracts upon the terms and conditions
20 of such contracts. Such person must be authorized by the
21 health care providers and groups of health care providers to
22 hold joint discussions on their behalf with health care plans
23 over contractual terms and conditions affecting those health
24 care providers and groups of health care providers.

25 Section 15. Health Care Services Contracting Board.

26 (a) The Health Care Services Contracting Board is created
27 within the Office of the Attorney General. The Board shall
28 be advisory to the Attorney General and shall consist of an
29 equal number of representatives of health care providers,
30 health care plans, and public members who shall not be
31 engaged in any way, directly or indirectly, as providers of
32 health care services or with a health care plan.

33 (b) Not later than January 1, 2002, the Attorney General

1 shall make all appointments to the Board. The initial Board
2 shall have one-third of its members appointed for a term
3 expiring January 1, 2003; one-third of its members appointed
4 for a term expiring January 1, 2004; and one-third of its
5 members appointed for a term expiring January 1, 2005.
6 Thereafter, members shall serve for 3 year terms and may be
7 reappointed.

8 (c) Board members shall be compensated at the rate of
9 \$150 for each day in which they are actively engaged in the
10 business of the Board. In addition, Board members, other
11 than ex-officio members, shall receive reimbursement for
12 their actual expenses incurred in connection with their
13 service on the Board.

14 (d) The Board shall elect a chairman from among its
15 voting members by a record vote of a majority of the voting
16 members. The Board shall have the power to organize and
17 appoint other officers as it may deem necessary.

18 (e) The Board may conduct business upon the presence of a
19 quorum of a majority of the voting members. The Board shall
20 make recommendations to the Attorney General concerning the
21 duties of the Attorney General under this Act.

22 (f) The Attorney General shall provide and assign
23 adequate staff to perform activities for the Board.

24 Section 20. Duties of the Attorney General.

25 (a) It shall be the responsibility and duty of the
26 Attorney General to license, supervise, and regulate joint
27 discussion representatives.

28 (b) It shall be the responsibility and duty of the
29 Attorney General to (i) either approve or disapprove a
30 request of a joint discussion representative to enter into
31 discussions with a health care plan, (ii) either approve or
32 disapprove the written communications as required between
33 joint discussion representatives and their members, and

1 (iii) either approve or disapprove the terms and conditions
2 of all such contracts upon which a joint discussion
3 representative and offeror have conferred and reached a
4 proposed accord.

5 (c) The Attorney General shall approve such joint
6 discussions, written communications, and proposed contracts
7 if the Attorney General determines that the joint discussion
8 representative has demonstrated that the likely benefits
9 resulting from the joint discussions, written communications,
10 or proposed contracts outweigh the disadvantages attributable
11 to a reduction in competition that may result from the joint
12 discussions, written communications, or proposed contracts.
13 The Attorney General shall consider health care provider
14 distribution by type and by specialty and its effect on
15 competition. The joint discussions shall represent no more
16 than 20% of any type of health care providers in a geographic
17 service area of a health care plan, except in cases where in
18 conformance with the other provisions of this Act conditions
19 support the approval of a greater or lesser percentage.
20 Types of health care providers shall be defined based on the
21 licenses or other authorizations to provide health care
22 services held by the health care providers.

23 (d) Members of the Board shall be immune from any civil
24 or criminal liability or disciplinary sanction in any action
25 based upon any proceeding or other acts performed in good
26 faith as a member of the Board.

27 Section 25. Joint discussions authorized.

28 (a) Competing health care providers within the
29 geographic area served by a health care plan may meet and
30 enter into joint discussions regarding the following terms
31 and conditions of contracts with the health care plan:

32 (1) practices and procedures to assess and improve
33 the delivery of effective, cost-efficient preventive

1 health care services, including, but not limited to,
2 childhood immunizations, prenatal care, and mammograms
3 and other cancer screening tests or procedures;

4 (2) practices and procedures to encourage early
5 detection and effective, cost-efficient management of
6 diseases and illnesses in children;

7 (3) practices and procedures to assess and improve
8 the delivery of women's medical and health care,
9 including, but not limited to, menopause and
10 osteoporosis;

11 (4) clinical criteria for effective, cost-efficient
12 disease management programs, including, but not limited
13 to, diabetes, asthma, and cardiovascular disease;

14 (5) practices and procedures to encourage and
15 promote patient education and treatment compliance,
16 including, but not limited to, parental involvement with
17 their children's health care;

18 (6) drug formularies;

19 (7) practices and procedures to identify, correct,
20 and prevent potentially fraudulent activities;

21 (8) practices and procedures for the effective,
22 cost-efficient use of outpatient surgery;

23 (9) clinical practice guidelines and coverage
24 criteria;

25 (10) administrative procedures, including, but not
26 limited to, methods and timing of health care provider
27 payment for services;

28 (11) dispute resolution procedures relating to
29 disputes between health care plans and health care
30 providers;

31 (12) patient referral procedures;

32 (13) formulation and application of health care
33 provider reimbursement methodology;

34 (14) quality assurance programs;

1 (15) health care service utilization review and
2 utilization management procedures;

3 (16) health care provider selection and termination
4 criteria, including credentialing; and

5 (17) the inclusion or alteration of terms and
6 conditions to the extent they are the subject of
7 government regulation prohibiting or requiring the
8 particular term or condition in question; provided,
9 however, that such restriction does not limit health care
10 provider rights to jointly petition government for a
11 change in such regulation.

12 (b) Competing health care providers may jointly discuss
13 the terms and conditions specified in this subsection only
14 where a determination has been made by the Attorney General
15 that the health care plan has substantial market power:

16 (1) the fees or prices for services, including
17 those arrived at by applying any payment methodology
18 procedures;

19 (2) the conversion factors in a resource-based
20 relative value scale reimbursement methodology or similar
21 methodologies;

22 (3) the amount of any discount on the price of
23 services to be rendered by health care providers; and

24 (4) the dollar amount of capitation or fixed
25 payment for health care services rendered by health care
26 providers to enrollees.

27 (c) The Attorney General shall make the determination of
28 what constitutes substantial market power. A health care
29 plan has substantial market power if:

30 (1) the health care plan has the power to set the
31 terms and conditions listed in subsection (b) in a manner
32 that has already affected or threatens to adversely
33 affect the quality and availability of health care
34 services to enrollees; or

1 (2) the market share of the health care plan in the
2 health care financing market exceeds 15% of the enrollees
3 in the geographic area of the affected health care
4 providers of a joint discussion representative. When
5 calculating the market power of a health care plan, the
6 Attorney General shall include all policies and products
7 offered by subsidiary, parent, and affiliate health care
8 plans of the offeror. When calculating the market power
9 of a health care plan, the number of enrollees in
10 Medicare, the Department of Public Aid's Medical
11 Assistance Program, and other governmental programs shall
12 not be counted as part of the health care financing
13 market, unless the enrollees receive their governmental
14 program coverage through a health care plan. When
15 calculating the market power of a health care plan that
16 has third party administration products, the number of
17 enrollees of the health care plan shall include the
18 number of enrollees enrolled in or covered by the third
19 party payor.

20 (d) Financial information submitted to the Board or
21 Attorney General under this Act shall be privileged and
22 confidential to the same extent as information under the
23 provisions of Part 21 of Article VIII of the Code of Civil
24 Procedure.

25 (e) Nothing contained in this Act shall be construed to
26 enable health care providers and groups of health care
27 providers to engage in any group boycott or strike.

28 (f) Nothing in this Act shall be construed to authorize
29 a joint discussion representative to discuss with a health
30 care plan or to agree to any health care plan policies to
31 exclude, limit the participation or reimbursement of, or
32 otherwise limit the services of health care providers not
33 represented by the health care provider's joint discussion
34 representative. Any such plan policies are void and against

1 public policy. Nothing in this Act shall be construed to
2 permit, require, or authorize any individual or group of
3 health care providers to provide services not within the
4 scope of their license or authorization.

5 (g) Nothing in this Act shall require any Independent
6 Practice Association or Physician Hospital Organization to
7 utilize the services of a joint discussion representative or
8 be licensed under this Act.

9 Section 30. Approval of joint discussions.

10 (a) Upon the request of one or more of its affected
11 members, a joint discussion representative may send a written
12 communication to its members to determine the interest of its
13 members in having the joint communication representative
14 review, comment upon, and advise or discuss and confer with
15 offerors of a contract, or both, regarding the terms and
16 conditions of the contract.

17 (b) When a joint discussion representative determines to
18 review, comment upon, and advise or discuss and confer with
19 offerors of a contract, or both, regarding the terms and
20 conditions of a contract, the joint discussion representative
21 shall make such intention known in writing to those members
22 it has reason to believe are or may be affected by such
23 contract. Such written communication may be sent by
24 electronic mail or facsimile and shall:

25 (1) describe the specific terms and conditions of
26 the proposed contract to be discussed with the health
27 care plan; and

28 (2) advise the members of the date, time, and
29 location of an initial meeting to which members are
30 invited to attend to discuss the specific terms and
31 conditions of the proposed contract to be discussed with
32 the health care plan. Such initial meeting shall be
33 conducted not sooner than 30 days from the date of the

1 initial written communication and no later than 60 days
2 from the date of the initial written communication.

3 (c) Before engaging in any joint discussions with a
4 health care plan on behalf of its members, the joint
5 discussion representative shall furnish, for the Attorney
6 General's approval, a report identifying:

7 (1) the joint discussion representative's name and
8 business address and the financial relationships of the
9 representative, if any, with its members and any health
10 care plans;

11 (2) the names, addresses, provider types, and
12 specialties, if applicable, of the members who will be
13 represented by the joint discussion representative;

14 (3) a statement from each of the members who will
15 be represented by the joint discussion representative
16 indicating that the representative is authorized to
17 represent him or her in the joint negotiations with the
18 health care plan;

19 (4) the relationship of the members requesting
20 joint discussions to the total population of health care
21 providers, by type of health care provider to be
22 represented, in each geographic service area, based on
23 total population figures made available by the
24 Department;

25 (5) the health care plan or plans with which the
26 joint discussion representative intends to have
27 discussions on behalf of the its members;

28 (6) the relationship, if any, with the health care
29 plan of each member requesting joint discussions;

30 (7) the proposed terms and conditions to be
31 discussed with the health care plan;

32 (8) the joint discussion representative's
33 procedures to ensure compliance with this Act;

34 (9) the expected impact of the discussions on the

1 accessibility to care and the quality of patient care;

2 (10) the benefits of a contract between the health
3 care plan and members; and

4 (11) a copy of the initial written communication
5 required under subsections (a) and (b).

6 Such report shall be sent to the Attorney General at the
7 same time that the initial written communication required
8 under subsection (b) is sent to the members of the joint
9 discussion representative. The joint discussion
10 representative may apply to hold discussions with more than
11 one health care plan in a single report. The joint
12 discussion representative shall attest to the truthfulness,
13 accuracy, and completeness of the report.

14 (d) The report provided under subsection (c) shall be
15 updated by the joint discussion representative as necessary.

16 (e) A joint discussion representative may represent more
17 than one type of health care provider.

18 (f) Joint discussions shall be approved in accordance
19 with Section 50.

20 Section 35. Joint discussions with offeror.

21 (a) A joint discussion representative may enter into
22 joint discussions with offerors on behalf of its members.
23 The joint discussions shall be limited to terms and
24 conditions approved by the Attorney General under Section 50.

25 (b) At all times during the joint discussions the joint
26 discussion representative may provide written communications
27 with its members as to any and all terms or conditions of any
28 proposed contract and as to the status of the joint
29 discussions with the offeror, including, where applicable,
30 the reason or reasons why discussions have been delayed or
31 interrupted. Such written communications may be sent by
32 electronic mail or facsimile and may advise the members of
33 the date, time, and location of meetings to which members are

1 invited to attend to discuss the specific terms and
2 conditions of the proposed contract and the status of the
3 joint discussions. Such meetings shall be conducted not
4 sooner than 30 days from the date of the written
5 communication and no later than 60 days from the date of the
6 written communications. The written communications shall be
7 approved by the Attorney General in accordance with Section
8 50.

9 (c) Joint discussion representatives may join together
10 in discussions and conferences with offerors and may share
11 information derived in the course of the review of proposed
12 contracts or discussions with offerors, or both. Discussions
13 shall be limited to those terms and conditions approved by
14 the Attorney General in accordance with Section 50.

15 (d) Upon completion of a proposed contract, the joint
16 discussion representative shall inform its affected members,
17 in writing, of that fact, and shall further advise its
18 members of an analysis of the terms and conditions of the
19 proposed contract. The written communication shall include a
20 copy of the proposed contract. Such written communication
21 may be sent by electronic mail or facsimile and shall advise
22 the members of the date, time, and location of a meeting to
23 which members are invited to attend to discuss the specific
24 terms and conditions of the proposed contract. Such meeting
25 shall be conducted not sooner than 30 days from the date of
26 the written communication and no later than 60 days from the
27 date of the written communication. The written communication
28 shall be approved by the Attorney General in accordance with
29 Section 50. The contract shall be approved by the Attorney
30 General in accordance with Section 55.

31 Section 40. Refusal to hold joint discussions. No offeror
32 shall be required to enter into joint discussions with a
33 joint discussion representative. In the event that joint

1 discussions have been approved by the Attorney General in
2 accordance with Section 50 and the offeror refuses to discuss
3 and confer with the joint discussion representative regarding
4 the terms and conditions of the proposed contract, the joint
5 discussion representative shall inform its affected members,
6 in writing, of that fact, and shall further advise its
7 members of such other analysis of the terms and conditions of
8 the proposed contract that it may not have conveyed in its
9 previous communications. Such written communication may be
10 sent by electronic mail or facsimile and shall advise the
11 members of the date, time, and location of a meeting to which
12 members are invited to attend to discuss the specific terms
13 and conditions of the proposed contract and the refusal of
14 the health care plan to enter into joint discussions with the
15 joint discussion representative. Such meeting shall be
16 conducted not sooner than 30 days from the date of the
17 written communication and no later than 60 days from the date
18 of the written communication. The written communication
19 shall be approved by the Attorney General in accordance with
20 Section 50.

21 Section 45. Joint discussion representative and offeror
22 reach an impasse. An offeror may terminate joint discussions
23 with a joint discussion representative at any time. In the
24 event that the joint discussions between the joint discussion
25 representative and the offeror reach an impasse in the
26 judgment of the joint discussion representative, the joint
27 discussion representative shall inform its affected members,
28 in writing, of that fact, and shall further advise its
29 members of the reasons for the impasse and of such other
30 analysis of the terms and conditions of the proposed contract
31 that it may not have conveyed in its previous communications.
32 Such written communication may be sent by electronic mail or
33 facsimile and shall advise the members of the date, time, and

1 location of a meeting to which members are invited to attend
2 to discuss the specific terms and conditions of the proposed
3 contract and the impasse reached with the health care plan.
4 Such meeting shall be conducted not sooner than 30 days from
5 the date of the written communication and no later than 60
6 days from the date of the written communication. The written
7 communication shall be approved by the Attorney General in
8 accordance with Section 50.

9 Section 50. Review of written communications by the
10 Attorney General.

11 (a) All written communications required by Sections 30,
12 35, 40, and 45 shall be filed by the joint discussion
13 representative with the Attorney General and the offeror
14 within 5 days after the submission to members. The Attorney
15 General shall review the contents of each written
16 communication to determine whether the communication, or any
17 portion thereof wherein the terms or conditions are
18 summarized or described, accurately summarizes or describes
19 such terms or conditions. The Attorney General shall notify
20 the representative and the offeror within 20 days of receipt
21 if it objects to a communication because such communication
22 does not accurately summarize or describe the terms or
23 conditions. Approval of the written communication shall be
24 deemed to have been granted if the Attorney General does not
25 take any action within the 20 day period.

26 (b) The Attorney General shall approve joint
27 discussions, written communications, and proposed contracts
28 upon a formal finding that the joint discussions, written
29 communications, and proposed contracts do not contain any
30 term or condition prohibited by this Act. If disapproved,
31 the Attorney General shall furnish a written explanation to
32 the joint discussion representative and the offeror of any
33 deficiencies along with a statement of specific remedial

1 measures as to how such deficiencies could be corrected.

2 (c) If the Attorney General objects to a written
3 communication, or a portion thereof, within the 20 day
4 period, the joint discussion representative shall attempt to
5 informally resolve the Attorney General's objections prior to
6 any scheduled meeting. If resolution is reached, the joint
7 discussion representative may be required by the Attorney
8 General to send members an additional written notice. If no
9 resolution is reached, the scheduled meeting shall be
10 canceled and the joint discussion representative shall inform
11 its members of the Attorney General's objections. The
12 Attorney General's objection constitutes a final
13 administrative decision that may be appealed by the joint
14 discussion representative under the provisions of the
15 Administrative Review Law.

16 (d) The Attorney General shall approve joint discussions
17 and written communications if the procompetitive and other
18 benefits of the joint discussions and written communications
19 outweigh any anticompetitive effects in the view of the
20 Attorney General. In the case of a written communication
21 seeking approval to jointly negotiate one or more fee or
22 fee-related terms, the health care plan must have substantial
23 market power over the health care providers.

24 (e) The procompetitive and other benefits of joint
25 discussions, written communications, and proposed provider
26 contract terms and conditions may include, but shall not be
27 limited to, restoration of the competitive balance in the
28 market for health care services, protections for access to
29 quality patient care, promotion of the health care
30 infrastructure and medical advancement, and improved
31 communications between health care providers and health care
32 plans. When weighing the anticompetitive effects of proposed
33 contract terms and conditions, the Attorney General may
34 consider whether the terms provide for excessive payments or

1 contribute to the escalation of the cost of providing health
2 care services.

3 (f) The Attorney General may require the submission of
4 such supplemental information as it may deem necessary or
5 proper to enable the Attorney General to reach a
6 determination under this Section.

7 Section 55. Review of proposed contracts by the Attorney
8 General.

9 (a) Proposed contracts agreed to under Section 35 shall
10 be filed by the joint discussion representative with the
11 Attorney General and the offeror within 5 days after the
12 submission to members. The Attorney General shall review the
13 proposed contract to determine whether the proposed contract
14 is consistent with this Act. The Attorney General shall
15 approve the proposed contract upon a formal finding that the
16 proposed contract does not contain any term or condition
17 prohibited by this Act and shall so notify the joint
18 discussion representative and the offeror. Approval of the
19 proposed contract shall be deemed to have been granted if the
20 Attorney General does not take any action within 20 days
21 after the proposed contract is filed with the Attorney
22 General.

23 (b) The Attorney General shall notify the joint
24 discussion representative and the offeror within 20 days of
25 receipt of the proposed contract if it objects to any
26 provision in the proposed contract submitted under subsection
27 (a). The Attorney General shall furnish a written
28 explanation of any deficiencies along with a statement of
29 specific remedial measures as to how such deficiencies could
30 be corrected. If the Attorney General objects to a contract
31 term or condition, or a portion thereof, within the 20-day
32 period, the joint discussion representative shall attempt to
33 informally resolve the Attorney General's objections with the

1 offeror prior to the scheduled meeting. If resolution is
2 reached, the joint discussion representative may be required
3 by the Attorney General to send members an additional written
4 notice. If no resolution is reached, the scheduled meeting
5 shall be canceled, and the joint discussion representative
6 shall inform its members of the Attorney General's
7 objections. The Attorney General's objection constitutes a
8 final administrative decision that may be appealed by the
9 joint discussion representative or offeror under the
10 provisions of the Administrative Review Law.

11 (c) The Attorney General shall approve a proposed
12 contract if the procompetitive and other benefits of the
13 contract terms outweigh any anticompetitive effects and the
14 contract terms are consistent with other applicable laws and
15 regulations.

16 (d) The provisions of this Section do not change any
17 requirements that a health care plan file proposed contracts
18 with the Department prior to offering those contracts.

19 Section 65. Licensure of joint discussion
20 representatives.

21 (a) Any person seeking to represent health care
22 providers or groups of health care providers shall submit an
23 application to the Attorney General, upon forms the Attorney
24 General may require, to be annually licensed to be a joint
25 discussion representative.

26 (b) The Attorney General shall accept applications for
27 licensure beginning July 1, 2001 and shall require an
28 applicant for licensure to submit a non-refundable initial
29 application fee in an amount not to exceed \$500 and may
30 provide for fees in amounts not to exceed \$300 for renewal of
31 annual licenses or reinstatement of suspended licenses.

32 (c) The Attorney General shall grant an annual joint
33 discussion representative license to any applicant who

1 demonstrates to the Attorney General's satisfaction that the
2 applicant agrees to adhere to the provisions of this Act.

3 (d) The Attorney General shall grant a license to an
4 applicant who meets the requirements of this Section within
5 30 days of receipt of satisfactory and appropriate
6 application materials.

7 (e) A joint discussion representative shall not:

8 (1) fail to continuously meet the requirements for
9 licensure as provided under this Section;

10 (2) fail to submit written communications and
11 proposed contracts to the Attorney General as provided
12 under this Act;

13 (3) knowingly fail to disclose to its members or
14 offerors with whom it enters into joint discussions a
15 potential conflict of interest in regard to its
16 representation;

17 (4) accept compensation or any other thing of value
18 or advantage from an offeror with whom it has entered or
19 intends to enter into joint discussions; or

20 (5) materially misrepresent to an offeror the size
21 or composition of its membership.

22 (f) Nothing in this Act shall be construed to require
23 licensure of a representative of an individual health care
24 provider or group of health care providers practicing as a
25 partnership, professional service corporation, independent
26 practice association, health care provider hospital
27 organization, health maintenance organization holding a valid
28 certificate of authority under the Health Maintenance
29 Organization Act, clinic, or the like in the consideration
30 and discussion and conference upon the terms and conditions
31 of any contract for the provision of health care services
32 offered such health care provider or group of health care
33 providers.

1 Section 70. Activities of joint discussion
2 representatives.

3 (a) Health care providers and groups of health care
4 providers may join and be represented by more than one joint
5 discussion representative.

6 (b) A joint discussion representative shall not be
7 required to represent every health care provider and group of
8 health care providers who may request the joint discussion
9 representative to represent him or her.

10 (c) The joint discussion representative shall advise
11 health care providers of the provisions of this Act and shall
12 warn health care providers of the potential for legal action
13 against health care providers who violate State or federal
14 antitrust laws when acting outside the authority of this Act.

15 (d) Each joint discussion representative may hire
16 persons as employees or independent contractors to review,
17 comment upon, and advise upon contracts and discuss with
18 offerors the terms and conditions of the contracts under the
19 direct supervision of the joint discussion representative.

20 (e) A joint discussion representative may contract with
21 other joint discussion representatives to review, comment
22 upon, and advise upon contracts or discuss and confer with
23 offerors in regard to contracts, or both, under the direction
24 of such joint discussion representative so long as the
25 contractual relationship is reduced to writing and submitted
26 to the Attorney General for it to review and to determine
27 whether the contract, or any portion thereof, violates this
28 Act. The Attorney General shall inform the joint discussion
29 representative within 20 days of receipt of such contract if
30 it objects to the contract or any portion thereof. If the
31 Attorney General objects to such contract between joint
32 discussion representatives within the 20-day period, the
33 joint discussion representative proposing the contract shall
34 attempt to informally resolve the Attorney General's

1 objections. If resolution is reached within 30 days of the
2 joint discussion representative's receipt of the Attorney
3 General's objections, the joint discussion representative may
4 be required to amend the proposed contract. If no resolution
5 is reached, the Attorney General's objections shall
6 constitute a final administrative decision that may be
7 appealed by the joint discussion representative under the
8 provisions of the Administrative Review Law.

9 Section 75. Suspension or revocation of joint discussion
10 representative's license.

11 (a) Upon the motion of the Attorney General or upon the
12 verified complaint in writing of any person setting forth
13 facts that, if proven, would indicate that a joint discussion
14 representative has engaged in an activity prohibited by this
15 Act, the Attorney General shall investigate the actions of
16 the joint discussion representative.

17 (b) The Attorney General shall, before suspending or
18 revoking a license, hold a hearing on any charges and both
19 the complainant and the joint discussion representative shall
20 be accorded ample opportunity to present in person or by
21 counsel such statement, testimony, evidence, and argument as
22 may be pertinent to the charges or to any defense.

23 (c) The Attorney General shall serve written notice to
24 the joint discussion representative of any charges made and
25 the time and place for the hearing of the charges before the
26 Attorney General. Such hearing shall be no earlier than 30
27 days after such notice is given by the Attorney General. The
28 Attorney General shall direct the joint discussion
29 representative to file a written answer to the Attorney
30 General under oath within 20 days after the service of the
31 written notice and inform the joint discussion representative
32 that failure to file the answer will result in a default
33 action against the joint discussion representative's license.

1 (d) Upon formal finding by the Attorney General that a
2 joint discussion representative has engaged in activity
3 prohibited by this Act, the Attorney General may, in its
4 discretion, cause the joint discussion representatives's
5 license to be suspended for a period of time not to exceed
6 one year or may revoke the joint discussion representative's
7 license. Where a joint discussion representative's license
8 has previously been twice suspended, the Attorney General's
9 finding of a violation of this Act shall result in the
10 immediate revocation of the joint discussion representative's
11 license. No joint discussion representative whose license
12 has been revoked may re-apply for licensure within one year
13 of the effective date of the revocation.

14 Section 80. Health care provider joint discussions;
15 antitrust exemption.

16 (a) This Act does not confer authority to engage in
17 joint discussions that are not submitted to the Attorney
18 General for approval if such joint discussions are in
19 violation of State or federal antitrust laws. Conduct
20 seemingly pursuant to provisions of this Act done without the
21 good faith intention to seek approval of the Attorney General
22 is not entitled to the protections and immunities of this
23 Section.

24 (b) It is the intent of this Act to require the State,
25 through the Attorney General, to provide direction,
26 supervision, and control over the joint discussion process.
27 To achieve the purpose of this Act, this State direction,
28 supervision, and control shall provide immunity from any
29 civil or criminal liability under the Illinois Antitrust Act
30 and State-action immunity under federal antitrust laws to
31 health care providers and joint discussion representatives
32 who participate in joint discussions as authorized under this
33 Act.

1 Section 85. Joint discussions; Attorney General action.
2 The Attorney General shall have all the powers necessary or
3 convenient for the representation and protection of the
4 public interest in all proceedings under this Act, including,
5 without limitation, the right to intervene as a party or
6 otherwise participate in any proceeding under this Act.
7 Nothing in this Act shall limit the authority of the Attorney
8 General to initiate an action to enforce the civil or
9 criminal liability provisions of the Illinois Antitrust Act
10 if the Attorney General determines that a health care
11 provider or joint discussion representative have exceeded the
12 scope of the actions authorized under this Act.

13 Section 90. Investigations. The Attorney General, at any
14 time after a written communication or proposed contract
15 required under Section 30, 35, 40 or 45 is filed or approved
16 under this Act, may require by subpoena the attendance and
17 testimony of witnesses and the production of documents for
18 the purpose of investigating compliance with this Act. The
19 Attorney General may seek a court order compelling compliance
20 with a subpoena issued under this Section.

21 Section 95. Rulemaking. The Attorney General shall have
22 the authority to adopt rules necessary to implement the
23 provisions of this Act.

24 Section 100. Construction. Nothing in this Act shall be
25 construed to prohibit health care providers from negotiating
26 the terms and conditions of contracts as permitted by other
27 State or federal law.

28 Section 105. Severability. The provisions of this Act
29 are severable under Section 1.31 of the Statute on Statutes.

1 Section 200. The Illinois Antitrust Act is amended by
2 changing Section 5 as follows:

3 (740 ILCS 10/5) (from Ch. 38, par. 60-5)

4 Sec. 5. No provisions of this Act shall be construed to
5 make illegal:

6 (1) the activities of any labor organization or of
7 individual members thereof which are directed solely to labor
8 objectives which are legitimate under the laws of either the
9 State of Illinois or the United States;

10 (2) the activities of any agricultural or horticultural
11 cooperative organization, whether incorporated or
12 unincorporated, or of individual members thereof, which are
13 directed solely to objectives of such cooperative
14 organizations which are legitimate under the laws of either
15 the State of Illinois or the United States;

16 (3) the activities of any public utility, as defined in
17 Section 3-105 of the Public Utilities Act to the extent that
18 such activities are subject to a clearly articulated and
19 affirmatively expressed State policy to replace competition
20 with regulation, where the conduct to be exempted is actively
21 supervised by the State itself;

22 (4) The activities of a telecommunications carrier, as
23 defined in Section 13-202 of the Public Utilities Act, to the
24 extent those activities relate to the provision of
25 noncompetitive telecommunications services under the Public
26 Utilities Act and are subject to the jurisdiction of the
27 Illinois Commerce Commission or to the activities of
28 telephone mutual concerns referred to in Section 13-202 of
29 the Public Utilities Act to the extent those activities
30 relate to the provision and maintenance of telephone service
31 to owners and customers;

32 (5) the activities (including, but not limited to, the
33 making of or participating in joint underwriting or joint

1 reinsurance arrangement) of any insurer, insurance agent,
2 insurance broker, independent insurance adjuster or rating
3 organization to the extent that such activities are subject
4 to regulation by the Director of Insurance of this State
5 under, or are permitted or are authorized by, the Insurance
6 Code or any other law of this State;

7 (6) the religious and charitable activities of any
8 not-for-profit corporation, trust or organization established
9 exclusively for religious or charitable purposes, or for both
10 purposes;

11 (7) the activities of any not-for-profit corporation
12 organized to provide telephone service on a mutual or
13 co-operative basis or electrification on a co-operative
14 basis, to the extent such activities relate to the marketing
15 and distribution of telephone or electrical service to owners
16 and customers;

17 (8) the activities engaged in by securities dealers who
18 are (i) licensed by the State of Illinois or (ii) members of
19 the National Association of Securities Dealers or (iii)
20 members of any National Securities Exchange registered with
21 the Securities and Exchange Commission under the Securities
22 Exchange Act of 1934, as amended, in the course of their
23 business of offering, selling, buying and selling, or
24 otherwise trading in or underwriting securities, as agent,
25 broker, or principal, and activities of any National
26 Securities Exchange so registered, including the
27 establishment of commission rates and schedules of charges;

28 (9) the activities of any board of trade designated as a
29 "contract market" by the Secretary of Agriculture of the
30 United States pursuant to Section 5 of the Commodity Exchange
31 Act, as amended;

32 (10) the activities of any motor carrier, rail carrier,
33 or common carrier by pipeline, as defined in the Common
34 Carrier by Pipeline Law of the Public Utilities Act, to the

1 extent that such activities are permitted or authorized by
2 the Act or are subject to regulation by the Illinois Commerce
3 Commission;

4 (11) the activities of any state or national bank to the
5 extent that such activities are regulated or supervised by
6 officers of the state or federal government under the banking
7 laws of this State or the United States;

8 (12) the activities of any state or federal savings and
9 loan association to the extent that such activities are
10 regulated or supervised by officers of the state or federal
11 government under the savings and loan laws of this State or
12 the United States;

13 (13) the activities of any bona fide not-for-profit
14 association, society or board, of attorneys, practitioners of
15 medicine, architects, engineers, land surveyors or real
16 estate brokers licensed and regulated by an agency of the
17 State of Illinois, in recommending schedules of suggested
18 fees, rates or commissions for use solely as guidelines in
19 determining charges for professional and technical services;

20 (14) Conduct involving trade or commerce (other than
21 import trade or import commerce) with foreign nations unless:

22 (a) such conduct has a direct, substantial, and
23 reasonably foreseeable effect:

24 (i) on trade or commerce which is not trade or
25 commerce with foreign nations, or on import trade or
26 import commerce with foreign nations; or

27 (ii) on export trade or export commerce with
28 foreign nations of a person engaged in such trade or
29 commerce in the United States; and

30 (b) such effect gives rise to a claim under the
31 provisions of this Act, other than this subsection (14).

32 (c) If this Act applies to conduct referred to in
33 this subsection (14) only because of the provisions of
34 paragraph (a)(ii), then this Act shall apply to such

1 conduct only for injury to export business in the United
2 States which affects this State; or

3 (15) the activities of a unit of local government or
4 school district and the activities of the employees, agents
5 and officers of a unit of local government or school
6 district; or-

7 (16) the activities of any person pursuant to and in
8 compliance with the Health Care Services Contract Joint
9 Discussions Act.

10 (Source: P.A. 90-185, eff. 7-23-97; 90-561, eff. 12-16-97.)

11 Section 999. Effective date. This Act shall take effect
12 upon becoming law.