

LAW AND PUBLIC SAFETY

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DIVISION OF CRIMINAL JUSTICE

Health Care Accountability Act - N.J.S.A. 52:17B-196

Joint Negotiations by Physicians and Dentists with Health Benefit Plan Carriers

Proposed New Rules: N.J.A.C. 13:87

Authorized By: Mariellen Dugan, Acting Attorney General, in consultation with the
Commissioner of the Department of Banking and Insurance and the Commissioner of the
Department of Health and Senior Services.

Mariellen Dugan

Acting Attorney General

Authority: N.J.S.A. 52:17B-209

Calendar Reference: See Summary below for explanation of exception to calendar requirements.

Proposal Number: 2004-285.

Submit written comments by October 1, 2004 to:

Andrew L. Rossner, Deputy Director

Division of Criminal Justice

25 Market Street

P.O. Box 085

Trenton, New Jersey 08625-0085

The agency proposal follows:

Summary

The Legislature enacted N.J.S.A 52:17B-196 et seq., which provides a mechanism to authorize physicians and dentists, in appropriate cases, to jointly engage in negotiations with health/dental benefits plan carriers through an authorized representative and to qualify such joint negotiations and related activities for the State-action immunity under the Federal antitrust laws. Under the statutory scheme, physicians and dentists who wish to engage in joint negotiations through a representative may obtain permission from the Attorney General through the Division of Criminal Justice. When an approved representative's negotiations result in a contract, the statute provides for review and approval of that contract by the Attorney General through the Division of Criminal Justice. The petitioners must demonstrate that the proposed negotiations or contracts will result in benefits that outweigh any disadvantages that may result from a reduction in competition. The New Jersey Department of Banking and Insurance in consultation with the New Jersey Department of Health and Senior Services are tasked with collecting data relevant to this analysis and provide an annual report to the Attorney General on the impact of the provisions of this act on average physician and dentist fees in New Jersey. In order to implement the act, N.J.S.A. 52:17B-196 et seq., authorizes the Attorney General, in consultation with the Commissioners of Banking and Insurance and Health and Senior Services, to adopt rules and regulations necessary for implementation.

When the proposed negotiations or contract terms involve fees, as a threshold matter, the Attorney General, through the Division of Criminal Justice, in consultation with the

Commissioners of Banking and Insurance and Health and Senior Services, is required to determine whether the health/dental benefits plan carrier with whom a group of physicians or dentists wish to engage in joint negotiation through a representative, has substantial market power and whether any of the terms or conditions of the contract with the carrier poses a threat to the quality and availability of patient care. When reviewing and either approving or disapproving petitions for joint negotiations and any resultant contracts whether fee related or not, the Attorney General, through the Division of Criminal Justice, must determine whether the applicant has shown that the likely benefits resulting from the proposed joint negotiation or contract outweigh the disadvantages attributable to any resultant reduction in competition.

Proposed new Subchapter 1, General, (N.J.A.C. 13:87-1.1 through 1.3) establishes general provisions, including the purpose, scope and effect of the chapter, definition of terms and required fees. Proposed N.J.A.C. 13:87-1.1 states the purpose of the chapter as the establishment of procedures to enable competing physicians to jointly negotiate contracts with health/dental benefits plan carriers. Proposed N.J.A.C. 13:87-1.2 provides the definition of terms necessary for the implementation of N.J.S.A. 52:17B-196 et seq., and understanding the rules. Proposed N.J.A.C. 13:87-1.3 sets fees for the filing of applications and proposed contracts in amounts reasonable and necessary to recover the anticipated costs of administering N.J.S.A. 52:17B-196 et seq. The fees were computed based on the costs to the State agency for performing the review and data gathering function and the anticipated number of filings expected. Higher fees are required for fee related negotiations because review of fee related negotiations petitions are more complex and requires more analysis than is necessary for non-fee related negotiations.

Proposed new Subchapter 2, Petition Requirements, (N.J.A.C. 13:87-2.1 through 2.5) sets forth the information that must be included in an application for joint negotiation and provides

separate requirements for applications for fee-related and non-fee related negotiations. Proposed N.J.A.C. 13:87-2.1 sets out the general requirements for submitting a petition to the appropriate state agencies and provides the mailing addresses for these filings. Subsections (c) and (d) set forth instructions for organizing and labeling the petition and dealing with unavailable and nondisclosable information. Subsection (e) requires the representative and the physicians/dentists to cooperate with the Division of Criminal Justice's efforts to obtain unavailable or nondisclosure information and it also requires physicians and dentists to sign a Contract Information Disclosure Authorization Form (specified in N.J.A.C. 13:87-9.1) authorizing the Division of Criminal Justice to obtain copies of existing or past contracts directly from health/dental benefits plan carriers. Subsection (f) states that an application will not be deemed incomplete solely because of a health benefit /dental plan carrier's refusal to provide a copy of a relevant contract or fee schedule. That subsection also contains a provision permitting applicants to withdraw their petition and have their petition fee refunded if a carrier refuses to provide copies of these documents. Subsection (g) states that any notices of contract termination issued by any participating physician, dentist or its provider group to the carrier shall be deemed withdrawn upon the filing of a petition pursuant to these regulations.

Proposed N.J.A.C. 13:87-2.2 sets out the information to be submitted in all petitions which the Division of Criminal Justice considers necessary to ensure compliance with N.J.S.A. 52:17B-196 et seq. This includes information about the physicians/dentists representative (subsection (a)), the participating physicians/dentists (subsection (b)), the market for physician/dentist services (subsection (c)), the proposed negotiations (subsection (d)) and the representative's plan of operation and procedure (subsection (e)). Paragraph (a) 10 also requires the representative to complete and submit as part of its petition a Notice to Carrier of Filing of

Petition (specified in N.J.A.C. 13:87-9.2) that will be forwarded by the Division of Criminal Justice to the carrier named in the representatives petition. The Division of Criminal Justice needs the information listed in N.J.A.C. 13:87-2.2(a) through (e) to make determinations required by N.J.S.A. 52:17B-196 et seq., including analysis of the economic and patient care detriment or benefit that would result from approving the proposed negotiation. The information will also be used to establish sufficient State oversight and control over the joint negotiations to enable the participants to enjoy State action antitrust immunity.

Proposed N.J.A.C. 13:87-2.3 describes additional information, including a Contract Information Form (specified in N.J.A.C. 13:87-9.3), that must be filed when fee-related negotiations are proposed. For this type of negotiation, the Division of Criminal Justice must make the additional determination that the fee related contract terms at issue adversely effect the quality of patient care (subsection (a)) and that the carrier named in the petition has substantial market power (paragraph (a) 2)). The information required in N.J.A.C. 13:87-2.3 relates to those determinations. In order to determine whether a health benefit plan has substantial market power, the Division of Criminal Justice needs information about how much of the physicians/dentists business is controlled by the carrier. The information requested in and the information reported in the Contract Information Form is essential to this analysis. Proposed N.J.A.C. 13:87-2.4 sets out the notarized statements that must accompany petitions. Subsection (a) sets forth what must be attested to in the notarized statement from the representative. Subsection (b) describes what must be attested to in the notarized statement from each participating physician/dentist. Proposed N.J.A.C. 13:87-2.5 provides that the Division of Criminal Justice may request additional information required to make its determination.

Proposed new Subchapter 3, Review of Petition, (N.J.A.C. 13:87-3.1 through 3.6) establishes rules governing the Division of Criminal Justice's application review process. Proposed N.J.A.C. 13:87-3.1 provides that an application will not be considered complete until all materials have been received by the Division of Criminal Justice and all fees paid to the appropriate state agency. Proposed N.J.A.C. 13:87-3.2 provides for pre-filing meetings with staff when novel or complex issues are presented by a proposed negotiation. Proposed N.J.A.C. 13:87-3.3 requires full disclosure of all information by petitioners and conditions the Division of Criminal Justice approval on such disclosure. Proposed N.J.A.C. 13:87-3.4 gives notice of and reserves the right of the Division of Criminal Justice to conduct independent investigations. Proposed N.J.A.C. 13:87-3.5 gives petitioners the right to withdraw their petitions at any time and provides for the refund of the filing fee in the event that an application is withdrawn within 10 business days of filing as a result of a carrier's refusal to negotiate. Proposed N.J.A.C. 13:87-3.6 requires that all the Division of Criminal Justice approvals will be given by a written approval letter from the Division of Criminal Justice.

Proposed new Subchapter 4, Review of Proposed Contracts, (N.J.A.C. 13:87-4.1 through 4.3) establishes rules governing the Division of Criminal Justice's contract review process. Proposed N.J.A.C. 13:87-4.1 sets out the requirements for the filing of proposed contracts, reports and plans of action. Proposed N.J.A.C. 13:87-4.2 establishes the contents of the filing of the contract, report and plan of action. Proposed N.J.A.C. 13:87-4.3 requires written approval prior to performance under any submitted contract.

Proposed new Subchapter 5, Remedial Measures, (N.J.A.C. 13:87-5.1 and 5.2) governs situations where the Division of Criminal Justice has disapproved a petition or proposed contract and specified remedial measures to correct the deficiencies. Proposed N.J.A.C. 13:87-5.1

provides the time frame for resubmission of a disapproved petition or contract. Proposed N.J.A.C. 13:87-5.2 states the time allowed for the Division of Criminal Justice review of a resubmission.

Proposed new Subchapter 6, Subsequent Negotiations And Contract Modifications, (N.J.A.C. 13:87-6.1 through 6.3) establishes requirements for resuming negotiations after an initial negotiation attempt has failed or when jointly negotiating modifications to a previously approved contract are attempted. Proposed N.J.A.C. 13:87-6.1 sets out the procedure for resuming negotiations when the statutory time frames have expired. Proposed N.J.A.C. 13:87-6.2 provides procedures for joint negotiation to modify a previously approved contract. Proposed N.J.A.C. 13:87-6.3 states that any jointly negotiated contract renewals or modifications must be submitted to the Division of Criminal Justice for approval.

In proposed new Subchapter 7, Carrier Comments Regarding Petition, (N.J.A.C. 13:87-7.1), proposed N.J.A.C. 13:87-7.1 specifies the time frame for submission of carrier comments to the Division of Criminal Justice regarding the filing of a petition in which that carrier is named. The named carrier will be required to also file a copy of its comments to the Department of Banking and Insurance and the Department of Health and Senior Services.

In proposed new Subchapter 8, Confidentiality of Information, (N.J.A.C. 13:87-8.1 and 8.2), proposed N.J.A.C. 13:87-8.1 specifies that information obtained by or disclosed to the Division of Criminal Justice or any other person in a petition under N.J.S.A. 52:17B-196 et seq. and this chapter will be considered proprietary and will not be made public without the written consent of the petitioners. Proposed N.J.A.C. 13:87-8.2 sets forth that information obtained by or disclosed to the Division of Criminal Justice or any other person in a petition under N.J.S.A.

52:17B-196 et seq. and this chapter shall be deemed to be exempt from the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

The Attorney General is providing a 60-day comment period for this proposal. Therefore, the proposal is exempt from the rulemaking calendar requirement under N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Legislature made a finding that joint negotiation by competing physicians and dentists of certain terms and conditions of contracts with health/dental benefits plan carriers may result in pro-competitive effects. The Legislature sought to restore the competitive market forces in circumstances where a health/dental benefits plan carrier dominates the market or can exercise substantial market power such that it can virtually dictate the terms of the contracts offered physicians and dentists. Nevertheless, the Legislature sought to find a mechanism which could restore fair negotiations to correct the power imbalance without risking harm to patient care. This is accomplished by having the Attorney General, after review by the Division of Criminal Justice and in consultation with Commissioners of Banking and Insurance and Health and Senior Services, determine when such an imbalance exists, approve the representatives who may engage in joint negotiations and approve the resulting contracts to ensure they do not adversely impact patient care.

Accordingly, these proposed new rules are offered to implement this Act.

Economic Impact

It is anticipated that the proposed new rules and N.J.S.A. 52:17B-196 et seq. will improve the economic bargaining position of physicians and dentists in markets in which health/dental

benefits plan carriers have substantial market power. The benefits of the joint negotiations and related activity authorized by the Act may serve to protect quality patient care, promote reinvestment in the health care delivery system and expand the number of health care and dental providers providing service in New Jersey. In particular, such negotiations and contracts may serve to increase the available number of doctors and dentists willing to perform services covered by the health benefit and dental plan carriers. Nevertheless, the joint activity authorized by this Act may have an upward impact upon prices for health and dental care and health and dental care insurance. If such an upward movement of prices occurs, this may cause a reduction in the available insurance coverage and reduce the ability for some residents to afford health and dental care services. The proposed new rules impose costs on those seeking approval to enter into joint negotiations in the form of fees for review. These fees are necessary to offset the administrative costs of the review process.

Federal Standard Statement

A Federal standards analysis is not required because N.J.S.A. 52:17B-196 et seq., which authorizes competing physicians and dentists to engage in joint negotiations through an approved representative, refers to and incorporates but does not exceed Federal standards for exempting these joint negotiations from the Federal antitrust laws under the State-action exemption to the Federal antitrust laws. 15 U.S.C. §§ 1-7. The Federal doctrine of state-action immunity, articulated in *California Retail Liquor Dealers Ass'n v. Midcal Aluminum Inc.*, 445 U.S. 937; 100 S. Ct. 937 (1988), shields state-authorized private conduct that would otherwise constitute a violation of Federal antitrust laws where the state has clearly articulated a policy to displace

competition with regulation and the state actively supervises the conduct. Active supervision requires that the private conduct be specifically evaluated and approved by the state.

In order to provide state-action immunity, the Attorney General, through the Division of Criminal Justice, must collect and analyze detailed information about the applicants, the proposed negotiations, and proposed contracts before approving them. The information required in the herein proposed new rules will enable the Attorney General, through the Division of Criminal Justice, to adequately supervise and exercise control over the joint negotiation process as required under the active supervision doctrine. Accordingly, the information that is required to be produced pursuant to the proposed new rules is necessary, appropriate and required by Federal antitrust law.

Jobs Impact

The proposed new rules will not have any impact on the generation or loss of jobs in New Jersey.

Agriculture Industry Impact

The proposed new rules will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The rules herein proposed for implementing N.J.S.A. 52:17B-196 to 209 will impose reporting, recordkeeping or compliance requirements upon physicians, dentists and the joint

negotiation representative. One or more of these may operate as small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the recordkeeping, information reporting and other compliance requirements will be mandatory only if they voluntarily seek authorization under the statute to engage in joint negotiations with health/dental benefits plans carriers through an authorized representative. The reporting and compliance requirements set forth by the proposed new rules are designed to provide the relevant information needed by the Division of Criminal Justice to evaluate applications for approval of proposed negotiations and proposed contract agreements. In turn, the information required to be produced by the parties pursuant to the proposed rules will enable the Attorney General, through the Division of Criminal Justice, to adequately supervise and exercise control over the joint negotiation process. This is of critical importance if the parties wish to have their otherwise anticompetitive conduct shielded from the reach of the Federal antitrust laws under the state action immunity doctrine. The statute authorizes fees for the filing of the applications and review of proposed contracts in amounts reasonable and necessary to recover the anticipated costs of administering the statute. The fees set forth in the rules reflect the anticipated cost and expense of reviewing and processing applications, which is likely to be costly. The fee does not depend on whether the parties triggering the statutory mechanism are small business. Professional services are not required to comply with the proposed new rules. However, individuals may choose to obtain such services at their discretion.

In the end, the compliance requirements and information reporting that is required to be produced by all of the parties, small businesses included, pursuant to the proposed rules are necessary and appropriate under the law. Simply put, neither the statute nor the state action immunity doctrine provide for a small business exception. Accordingly, there is no other way to

meet these legal obligations and to ensure compliance with the statute but to impose reporting, recordkeeping and compliance requirements on all physicians, dentist and representatives who otherwise operate as small businesses.

Smart Growth Impact

The proposed new rules will not have any impact on the achievement of smart growth or implementation of the State Development and Redevelopment Plan in New Jersey.

Full test of the proposed new rules follows:

CHAPTER 87

JOINT NEGOTIATIONS BY PHYSICIANS AND DENTISTS

WITH HEALTH BENEFIT PLAN CARRIERS

SUBCHAPTER 1 GENERAL PROVISIONS

13:87-1.1 Purpose and scope

This chapter establishes procedures to implement N.J.S.A. 52:17B-196 through 209 under which competing physicians and dentists may jointly negotiate contracts with health and dental benefits plan carriers subject to the approval of the Attorney General and to qualify such joint negotiations and related activities for the State action immunity under the Federal antitrust laws.

13:87-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Carrier” means an insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization which is authorized to issue health benefits plans in this State and a dental service corporation or dental plan organization authorized to issue dental plans in this State.

“Division of Criminal Justice” means the New Jersey Division of Criminal Justice.

“Dental benefits plan” means a benefits plan which pays or provides dental expense benefits for covered services and is delivered or issued for delivery in this State by or through a dental carrier.

“Dentist” means a person who is licensed to practice dentistry by the New Jersey State Board of Dentistry in accordance with the provisions of Title 45 of the Revised Statutes.

“DOBI” means the New Jersey Department of Banking and Insurance.

“DOHSS” means the New Jersey Department of Health and Senior Services.

“Fee-related negotiation” means a joint negotiation involving one or more of the terms and conditions listed in N.J.S.A. 52:17B-199 or any other term of a contract which establishes or has the effect of establishing a fee.

“Health benefits plan” means a plan which pays or provides hospital and medical expense benefits for covered services, and is delivered or issued for delivery in this State by or through a carrier. For the purposes of this chapter, health benefits plan does not include the following plans, policies or contracts: Medicare supplement coverage and risk contracts, accident only, specified disease or other limited benefit, credit, disability, long-term care, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) supplement coverage, coverage

arising out of a workers' compensation or similar law, automobile medical payment insurance, personal injury protection insurance issued pursuant to P.L. 1972, c. 70 (N.J.S.A.39:6A-1 et seq.), dental or vision care coverage only, or hospital expense or confinement indemnity coverage only.

“Independent practice association (IPA)” means an association of individual physicians that provides services on a negotiated capitation rate, fee-for-services basis, or flat retainer fee.

“Integrated practice group (IPG)” means a group of non-competing physicians/dentists, including one or more participating physicians/dentists, who are clinically integrated and/or share substantial financial risk

“Joint negotiation representative” means a representative selected by two or more independent physicians or dentists, and approved by the Attorney General pursuant to this chapter, to engage in joint negotiations with a carrier on their behalf.

“Metropolitan Statistical Area (MSA)” means the designation of certain urban areas across the United States by the United States Department of Commerce (areas with more than 50,000 people) for the purpose of data collection and tracking.

“Negotiation group” means a group of participating physicians/dentists that is seeking, has sought, or has obtained Attorney General approval to engage in communications with competitors and/or engage in joint negotiations with a health benefit plan pursuant to N.J.S.A. 52:17B-196 et seq. and this chapter.

“Non-fee-related negotiation” means a joint negotiation involving the terms and conditions listed in N.J.S.A.52:17B-198 or any other term that is not a fee or fee related term.

“Participating physician/dentist” means a member of a negotiation group.

“Person” means an individual, association, corporation, or any other legal entity.

“Petition” means an initial filing submitted by a physicians’ or a dentists’ representative on behalf of a negotiation group seeking Attorney General approval to engage in communications with competitors and/or joint negotiations with a health benefit plan pursuant to N.J.S.A. 52:17B-196 et seq. and this chapter.

“Physician” means a person who is licensed to practice medicine and surgery by the State Board of Medical Examiners in accordance with the provisions of Title 45 of the Revised Statutes.

“Physicians’/dentists’ representative” or “representative” means a third party who is authorized by physicians/dentists to negotiate on their behalf with health benefit plans over contractual terms and conditions affecting those physicians/dentists.

“Product” means a type of health benefits plan and/or dental benefits plan (for example, a commercial health maintenance organization (HMO), a commercial preferred provider organization (PPO), or an indemnity plan).

13:87-1.3 Fees

(a) Each petition submitted to the Division of Criminal Justice that proposes only non-fee-related negotiations shall be accompanied by a \$6,000 fee. In addition, each contract (including contract renewals and modifications) submitted to the Division of Criminal Justice which is the result of only non-fee-related negotiations shall be accompanied by a \$3,000 fee.

(b) Each petition submitted to the Division of Criminal Justice that proposes a fee-related negotiation shall be accompanied by a \$10,000 fee. In addition, each contract (including contract renewals and modifications) submitted to the Division of Criminal Justice which is the result of a fee-related negotiation shall be accompanied by a \$5,000 fee.

(c) Physicians'/Dentists' representative. In addition to the fees listed above, for each petition submitted to the Division of Criminal Justice, the representative shall pay a \$5,000 fee to act as a representative.

(d) The fees required by (a) through (c) above shall be by cashier's check or money order, made payable to the Division of Criminal Justice. All fees are nonrefundable, except as provided in N.J.A.C. 13:87-2.1 (f) and 3.5 (relating to withdrawal of petition).

SUBCHAPTER 2. PETITION REQUIREMENTS

13:87-2.1 Petitions

(a) The representative shall submit a completed petition containing the information required by this subchapter, along with the proper fee as required by N.J.A.C. 13:87-1.3. The representative shall submit one original and one copy of each completed petition to each agency at the following mailing or street addresses:

Department of Law and Public Safety

New Jersey Division of Criminal Justice

Attn: Antitrust-Procurement Fraud Bureau

25 Market Street

PO Box 085

Trenton, New Jersey 08625-085

Department of Banking and Insurance

Attn: R. Neil Vance, Chief Actuary,

Life & Health

20 West State Street

PO Box 325

Trenton, New Jersey 08625-0325

Department of Health and Senior Services

Attn: Assistant Commissioner / Office of Managed Care

Health & Agriculture Building

PO Box 360

Trenton, New Jersey 08625-0360

(b) A single petition may propose joint negotiations with more than one health /dental benefits plan carrier. However, a separate petition is required for each negotiation group.

(c) Each petition shall include the information listed in N.J.A.C. 13:87-2.2. The information shall be grouped and labeled by subsection and paragraph number. Petitions shall include a table of contents and identifying subject tabs for each part of the petition. Copies of relevant supporting documents shall be included where appropriate. If the petition contains data from third party sources, the source of the information shall also be specified.

(d) If any of the requested information is unavailable, the petition shall include an explanation of the reasons why and the efforts that have been made to obtain the information and from what sources. If the participating physicians/dentists are contractually prohibited from disclosing requested information, the petition shall identify the information or documents subject to such nondisclosure, the parties to the contracts that prohibit disclosure, and the contract terms which prohibit disclosure.

(e) The representative and the participating physicians/dentists shall cooperate with the Division of Criminal Justice in any effort it undertakes to obtain otherwise unavailable or nondisclosable information. Each participating physician/dentist shall complete and submit a Contract Information Disclosure Authorization Form on the form specified in N.J.A.C. 13:87-9.1.

(f) For each petition, the Division of Criminal Justice will determine whether the petition provides sufficient information to be deemed complete. A petition will not be deemed incomplete solely because of a health/dental benefits plan carrier's refusal to provide a copy of a relevant contract or fee schedule. If a health/dental benefits plan carrier refuses to provide a copy of a relevant contract or fee schedule, applicants may elect to withdraw their petition and receive a refund for their petition fee.

(g) Any notices of contract termination issued by any participating physician, dentist or its provider group to the carrier and listed by the representative pursuant to N.J.A.C. 13:87-2.2(b) shall be deemed withdrawn upon the filing of a petition pursuant to this chapter. A participating physician or dentist or their provider group may issue a new notice of contract termination only upon the withdrawal of the petition, approval of a contract pursuant to these regulations or withdrawal by the participating physician or dentist from the negotiation group.

13:87-2.2 Contents of petition

(a) The petition shall contain the following information regarding the physicians'/dentists' representative:

1. The representative's name, title, employer, and business address;
2. The representative's occupation, professional training, credentials and licenses, and experience in the health care field;
3. Any past or pending investigations or administrative or judicial proceedings in which it is alleged that the representative has engaged in any form of price fixing or other antitrust violation, or health care fraud or abuse, including any government or private investigations, lawsuits, settlements, judgments, fines or penalties relating to those allegations;

4. Contracts for services to be performed by the representative in connection with this chapter including any compensation arrangements;

5. The legal and business relationships between the representative and the participating physicians and dentists, including, but not limited to, any other contracting services provided by the representative for any participating physician and dentist;

6. The representative's pecuniary interest, if any, in the contracts to be negotiated under this chapter;

7. Any other physician/dentist groups the representative has represented, is representing, or plans to represent under this chapter or in any other negotiations between a group of physicians or dentists and health care providers, whether in this State or not;

8. Whether the representative has negotiated, is negotiating, or plans to negotiate with any carrier on behalf of any other physicians or dentists in the same county, zip code or other geographical area served by these participating physicians and dentists, and for each such negotiation, the names and specialties of all physicians, physician groups, dentists, dentist groups, carriers and health/dental benefits plans involved, and the nature and time frame of those negotiations;

9. Whether any participating physician or dentist has issued a notice of contract termination to the carrier or will be affected by a notice of contract termination issued by its provider group to the carrier; and

10.(a) Notice to Carrier of Filing of Petition on the form specified in N.J.A.C. 13:87-9.2; copy of this notice will be forwarded to the named carrier by the Division of Criminal Justice upon filing.

(b) The petition shall contain the following information regarding the participating physicians/dentists:

1. Each participating physician's/dentist's name and business address;
2. Each participating physician's/dentist's specialties, primary practice areas, clinic affiliations, and active hospital staff privileges;
3. Each integrated practice group (IPG) or independent practice association (IPA) to which each participating physician/dentist belongs, including the group's name, business address, type of legal organization, and approximate number of physician/dentist members;
4. For each carrier for which joint negotiations are proposed, whether any participating physician/dentist is a provider for that carrier through any IPG or IPA, and if so, indicate which IPG or IPA is a party to that contract;
5. Whether the joint negotiations that are proposed will represent more than 15 percent of the physicians/dentist in the county, zip code, MSA or other geographic area that the representative considers to be the carrier's service area; include an explanation and justification of how the representative defined the carrier's service area;
6. The type of legal organization, if any, of the negotiation group;
7. The names of any persons, other than the representative, authorized to represent each participating physician/dentist or integrated practice group (separately from the negotiation group) in negotiations with any carrier for which joint negotiations are proposed in the petition;
8. For each carrier for which joint negotiations are proposed, whether each participating physician/dentist or integrated practice group has had a contract with that carrier within the last three years, and if so, produce a copy of the contracts, and any correspondence from the past year concerning renewal, termination or modification of those contracts; and

9. Any past or pending investigations or administrative or judicial proceedings in which it is alleged that any participating physician/dentist or integrated practice group has engaged in any form of price fixing or other antitrust violation, or health care fraud or abuse, including any government or private investigations, lawsuits, judgments, fines or penalties relating to those allegations.

(c) Regarding the market for physician/dentist services, the petition shall:

1. Identify the 10 procedures, excluding office visits, that are performed most often by the participating physicians/dentists using Evaluation and Management (E&M) codes and rank each procedure in terms of revenue or billed charges it generates for each participating physicians/dentists (if the participating physicians/dentists have different specialties, provide this information separately for each specialty); however, this information is not required for a non-fee negotiation by a joint negotiation group that accounts for less than 15 percent of the physicians/dentists who practice the same specialty as the participating physicians/dentists in the county and zip codes in which the participating physicians/dentists practice;

2. Identify each health/dental benefits plan carrier by product that has done business in the last year with each of the participating physicians/dentists or integrated practice group in the joint negotiation group measured by revenue, by covered lives and by patient visits;

3. Identify the geographic area where the participating physicians/dentists have drawn their patients both by county and zip codes based on the patients place of residence; identify the number of patients from each zip code; and identify the zip codes that encompass the geographic area from which each participating physician/dentist draws 90 percent of their total patient base;

4. Identify all of the hospitals where the participating physicians have admitting privileges and identify the number of their patients admitted to each hospital. Also, provide hospital

admission zip codes for all of the hospitals that account for 75 percent of hospital admissions by the participating physicians in the joint negotiations group;

5. Provide the number of physicians/dentists, by specialty, who provide the same services as the participating physicians/dentists in each zip code area identified in (c) 3 above (if the participating physicians/dentists have different specialties, provide this information separately for each specialty);

6. For each carrier for which negotiations are proposed, produce the most recent provider directory in the participating physicians' or dentists' possession, identifying which physicians or dentists compete with the participating physicians or dentists (if the participating physicians or dentists have different specialties, provide this information separately for each specialty); and

7. Provide the joint negotiations group's and each individual participating physician's/dentist's/ IPG/IPA market share in the county and the geographic area covered by the zip codes which were identified in response to (c) 3 above.

i. Include the justification for all numbers and calculations used; or, if the precise market share cannot be provided, an estimate of the market share with a descriptions of how the estimate was prepared.

(d) Regarding the proposed negotiations, the petition shall:

1. Indicate with which health/dental benefits plan carrier the representative intends to enter negotiations on behalf of the negotiating group;

2. Identify the products about which the representative intends to negotiate on behalf of the negotiation group;

3. Identify the proposed subject matter(s) to be discussed or negotiated with the identified carrier, the impetus for such negotiations or discussions, and previous attempts made by

participating physicians or their integrated practice groups to achieve these goals by negotiating with the carrier independently;

4. Identify the specific contract terms and conditions to be negotiated and which of the categories set forth in N.J.S.A. 52:17B-199 encompasses each term or condition;

5. Identify the proposed time line of the negotiations;

6. Describe the expected impact of the negotiations on the quality, availability, and cost of patient care;

7. Describe the expected impact of the negotiations on competition;

8. Describe the expected impact of the negotiations on consumers;

9. Provide an analysis of the benefits of a contract between the identified carrier and physicians/dentists; and

10. The identity of any health care providers, other than the representative and the participating physicians/dentists, who will be parties to and will share risk in the contracts to be negotiated.

(e) Regarding the representative's plan of operation and procedures to ensure compliance with N.J.S.A. 52:17B-196 et seq. and this chapter, the petition shall:

1. Describe the procedures governing the logistics of communications between the representative and the carrier, between the representative and the participating physicians/dentists, and among the participating physicians/dentists, including procedures to limit these communications to approved products, terms and conditions contained in the representative's approved petition;

2. Provide an explanation of limitations on the representative's authority to bind the participating physicians/dentists, if any, and procedures governing the exercise of that authority;

3. Describe the procedures to ensure that the carrier remains free to contract with or offer different contract terms and conditions to individual competing physicians/dentists; and

4. Provide the information and instructions which the representative intends to give to participating physicians/dentists regarding these procedures and the prohibitions in antitrust laws regarding concerted activity among competing physicians/dentists.

13:87-2.3 Fee-related negotiations

(a) In addition to the information listed in N.J.A.C. 13:87-2.2, petitions that propose fee-related negotiations shall contain:

1. An analysis and information demonstrating that each of the fee-related terms and conditions named in N.J.A.C. 13:87-2.2(d)3 have already affected or threaten to adversely affect the quality and availability of patient care;

2. An analysis and information demonstrating that the carrier has substantial market power in the purchase of physician/dentistry services in the county, zip codes, and MSA that the representative considers to be the carrier's relevant service area;

3. An analysis and information identifying the market share of the joint negotiations group in the relevant county, zip codes and MSA considered to be the carrier's service area identified in response to (a)2 above;

4. An analysis and information demonstrating whether or not the joint negotiations group will represent more than 15 percent of the physicians/dentists in the relevant county, zip codes and MSA considered to be the carrier's service area identified in response to (a)2 above;

5. Provide the carrier's Statewide, county and MSA enrollment figures/covered lives by product and compute the carriers corresponding Statewide, county and MSA market share (by percentage) for each product;

6. Provide the carrier's enrollment figures/covered lives by product in the county/counties and zip codes where the joint negotiations group practices as identified in response to N.J.A.C. 13:87- 2.2(c)7 and compute the corresponding market share (by percentage) for each product;

7. For each of the carriers named in response to N.J.A.C. 13:87-2.2(c)2, provide the percentage of each participating physician's/dentist's business covered by that carrier, the dates of each contract currently in effect, the termination dates of any contracts that have been terminated in the past three years, and the reason for each of those terminations; and

8. For each product named in N.J.A.C. 13:87-2.2(d)2, complete and submit the Contract Information Form on the form designated as CIF form specified in N.J.A.C. 13:87-9.3 for each participating physician/dentist or single-specialty integrated practice group.

13:87-2.4 Attestations

(a) Each petition shall include a notarized statement by the representative attesting to:

1. His or her authority to represent the participating physicians/dentists;
2. The truthfulness, accuracy and completeness of the enclosed information;
3. The fact that the proposed negotiations with the named carrier regarding the specified terms and conditions are actually intended, and not merely possible;
4. That he or she will promptly notify the Division of Criminal Justice, in writing, if any material change in the facts or circumstances he or she has provided or attested to; and

5. That he or she has provided each participating physician and dentist with that portion of the petition provided pursuant to N.J.A.C. 13:87-2.2(d) entitled “Information Regarding the Proposed Negotiations” and that portion of the petition provided pursuant to N.J.A.C. 13:87-2.2(e) entitled “Representative’s Plan of Operation and Procedures to Ensure Compliance with N.J.S.A. 52:17B-196 to 209 and these rules,” including instructions about prohibitions in antitrust laws regarding concerted activity among competing physicians and dentists.

(b) Each petition shall include a notarized statement from each participating physician/dentist attesting to:

1. The truthfulness, accuracy and completeness of the information he or she provided in the petition;

2. The fact that the representative named in the petition is authorized to represent him or her in joint negotiations with the health benefit plans named in the petition;

3. That he or she will promptly notify the representative, in writing, of any material change in the information he or she has provided or the facts or circumstances he or she has attested to; and

4. The fact that he or she has read, understands and agrees with the information provided pursuant to N.J.A.C. 13:87-2.2(d) entitled “Information Regarding the Proposed Negotiations” and has read, understands and agrees to abide by the instructions provided pursuant to N.J.A.C. 13:87-2.2(e) entitled “Proposed Plan of Operation and Procedures to Ensure Compliance with N.J.S.A. 52:17B-196 to 209 and these rules,” including instructions about prohibitions in antitrust laws regarding concerted activity among competing physicians and dentist.

13:87-2.5 Requests for additional information

The Division of Criminal Justice may request additional information which the Division of Criminal Justice deems necessary to fulfill its duties under N.J.S.A. 52:17B-196 et seq. and this chapter. This request for additional information may be made at any time after a petition is submitted under N.J.A.C. 13:87-3 and/or at any time after proposed contracts are submitted under N.J.A.C. 13:87-4.

SUBCHAPTER 3. REVIEW OF PETITION

13:87-3.1 Complete filing

A petition shall be considered filed only when complete, and the petition fee and the representative's fee have been paid. A petition is complete when the Division of Criminal Justice has determined that it contains all of the necessary information from the petitioner to assess the petition and/or proposed contract. The Division of Criminal Justice may return an incomplete, deficient or unorganized petition to the representative and/or request additional information that is needed to make the petition complete.

13:87-3.2 Meetings with staff

If the petition presents novel or complex issues, the representative may consider requesting a meeting with the Division of Criminal Justice Antitrust Section staff to discuss the issues in advance of submitting a petition to help focus the analysis and fact-gathering efforts.

13:87-3.3 Full disclosure

The representative and the participating physicians/dentists shall make full and true disclosure with respect to the information required by this chapter. The conclusions in the approval letter are expressly conditioned on the truthfulness and accuracy of the factual representations made by the representative and the participating physicians and dentists.

13:87-3.4 Attorney General's investigation

The Division of Criminal Justice may conduct an independent investigation to determine whether the proposed negotiations meet the requirements of N.J.S.A. 52:17B-196 et seq. when the Division of Criminal Justice believes such an investigation is appropriate. This investigation may be conducted as part of a review of a petition submitted under N.J.A.C. 13:87-3.1 through 3.6 and/or a review of a proposed contract submitted under N.J.A.C. 13:87-4.1 through 4.3.

13:87-3.5 Withdrawal of petition

The representative may withdraw a petition at any time by submitting a written notice of withdrawal to the Division of Criminal Justice. If a carrier indicates it is unwilling to participate in joint negotiations, and a petition is withdrawn as a result within 10 business days from the date it was filed with the Division of Criminal Justice, the petition fee will be refunded, less an amount sufficient to compensate the State for costs incurred reviewing that petition.

13:87-3.6 Written authorization required

(a) The Division of Criminal Justice shall indicate its approval or disapproval of a petition by a written approval or disapproval letter within 30 days of receipt of a complete filing. No oral approval or other oral statement purporting to bind the State shall be valid or may be relied upon by the representative, a participating physician or dentist or any other person.

(b) The representative shall initiate the approved negotiations, if at all, within 60 days of receiving the approval letter from the Division of Criminal Justice.

SUBCHAPTER 4 REVIEW OF PROPOSED CONTRACTS

13:87-4.1 Filing requirements for proposed contracts

(a) Not later than 14 days after the parties identified in the initial filing have reached an agreement, and at least 60 days before the effective date of the agreement, the representative shall submit, for the Division of Criminal Justice's approval, the information required by N.J.A.C.

13:87-4.2, the proposed contract and any attachments or addenda, a report, and a plan of action, along with the proper fee as required by N.J.A.C. 3:87-1.3. A copy of the filing required by this subsection shall be submitted to the Division of Criminal Justice at the address listed in N.J.A.C.

13:87-2.1.

(b) A proposed contract shall not be considered filed until the documents listed in (a) above are received by the Division of Criminal Justice. Incomplete submissions shall be returned to the representative.

13:87-4.2 Contents of filing for proposed contracts

(a) The petitioner shall submit a report concerning the proposed contract which shall identify the likely benefits of the proposed contract and the effect the proposed contract may have on competition and consumers of health benefits and dental plans. Petitioner shall also include factual information and documentation supporting the identified benefits and competitive effects.

(b) The petitioner shall submit a notarized statement from the representative attesting to the fact that, since the filing of the initial petition, he or she has not engaged in any negotiations or communications with this carrier regarding any terms or conditions other than those specified in the petition and approved by the Division of Criminal Justice.

(c) The petitioner shall submit a plan of action for implementing the terms and conditions of the contract, including the proposed effective date of the contract, the term of the contract, and the procedures governing the reporting and resolving of disputes.

13:87-4.3 Written authorization required

(a) The Division of Criminal Justice shall indicate the Division of Criminal Justice approval or disapproval of a proposed contract by a written approval or disapproval letter within 30 days of receipt of a complete filing. No oral approval or other oral statement purporting to bind the State shall be valid or may be relied upon by the representative, a participating physician/dentist or any other person.

(b) The parties to the contract shall not begin performance of the contract before receiving written approval.

SUBCHAPTER 5. REMEDIAL MEASURES

13:87-5.1 Time for re-submission

Within 90 days of receiving a letter from the Division of Criminal Justice disapproving a petition or proposed contract, the representative may re-submit the original petition or contract for approval along with a report documenting the remedial measures that have been taken and demonstrating how the modifications will address the Division of Criminal Justice's concerns.

13:87-5.2 Review of remedial actions

The Division of Criminal Justice will review the revised submission and either approve or disapprove it within 60 days of receipt by the Division of Criminal Justice.

SUBCHAPTER 6. SUBSEQUENT NEGOTIATIONS AND CONTRACT MODIFICATIONS

13:87-6.1 Resuming joint negotiations after a failed negotiation

(a) As required by N.J.S.A. 52:17B-202c, the representative shall report to the Division of Criminal Justice a failed negotiation attempt within 14 days after either the representative or carrier notifies the other of its decision to decline or terminate negotiations. The representative shall also report to the Division of Criminal Justice a failed negotiation attempt if the carrier fails

to respond, within 14 days, to a representative's requests that a carrier enter into negotiations by a specified date.

(b) Once the representative has reported a failed negotiation attempt to the Division of Criminal Justice, the representative and participating physicians/dentists shall no longer be authorized to engage in any joint negotiations or communications among competitors which, absent State approval, would constitute a violation of the antitrust laws.

(c) The negotiation group, through its representative, may resume negotiations within 60 days of reporting a failed negotiation if it provides the Division of Criminal Justice with seven days prior notice of its intent to do so. Subsequent negotiations must not deviate from the terms of the negotiation group's previous filings and must be conducted in compliance with N.J.S.A. 52:17B-196 et seq., this chapter, and any requirements prescribed in the State approval letter.

13:87-6.2 Joint negotiations to modify an approved contract

During the original term of a contract approved pursuant to N.J.A.C. 13:87-4, the negotiation group may engage in joint negotiations or communications for the purpose of modifying the contract terms. The representative shall provide the Division of Criminal Justice written notice of the group's intention no later than 14 days before commencing such joint negotiations. The report shall include a notarized statement by the representative certifying that the negotiations will not deviate from the negotiation group's previous filings and will be conducted in compliance with N.J.S.A. 52:17B-196 et seq., this chapter, and any requirements prescribed in the approval letter issued by the Division of Criminal Justice.

13:87-6.3 Review of contracts negotiated under this subchapter

Any contract or agreement negotiated pursuant to this subchapter shall be submitted for the approval by the Division of Criminal Justice pursuant to the procedures outlined in N.J.A.C. 13:87-4.

SUBCHAPTER 7. CARRIER COMMENTS REGARDING PETITION

13:87-7.1 Filing of written submissions

The carrier named in the petition may submit written comments regarding a petition filed pursuant to N.J.S.A. 52:17B-202a. Such comments shall be submitted by the carrier to the Division of Criminal Justice, with a copy to the representative, the Department of Banking and Insurance and the Department of Health and Senior Services, at the addresses provided in N.J.A.C. 13:87-2.1 within 10 days of receiving a notice to the carrier of the filing of a representation petition.

SUBCHAPTER 8. CONFIDENTIALITY OF INFORMATION

13:87-8.1 No public disclosure of information

All information obtained by or disclosed to the Division of Criminal Justice or any other person in a petition under N.J.S.A. 52:17B-196 et seq. and this chapter shall be treated confidentially and shall be deemed proprietary and shall not be made public or otherwise disclosed by the Division of Criminal Justice or any other person without the written consent of the petitioners to whom the information pertains.

13:87-8.2 Exemption from Open Public Records Act

All information obtained by or disclosed to the Division of Criminal Justice or any other person in a petition under N.J.S.A. 52:17B-196 et seq. and this chapter shall be deemed to be exempt from the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

SUBCHAPTER 9. FORMS

13:87-9.1 Contract information disclosure authorization (CID authorization)

Contract Information Disclosure Authorization Form

In connection with my petition for joint negotiation, I authorize the New Jersey Division of Criminal Justice (The Division of Criminal Justice) to obtain information from third parties regarding the status and terms of any existing or past contracts or agreements involving the provision of physician services by me for members of the following health benefit plans: [list all health benefit plans named in N.J.A.C. 13:87-2.2(d), and in N.J.A.C. 13:87-2.3 if petition proposes fee-related negotiations]

I authorize any person who possesses information about these contracts or agreements to release it to the Division of Criminal Justice, and waive any rights I may have to withhold this information from the Division of Criminal Justice, including any rights created by nondisclosure clauses that may appear in these contracts or agreements.

Signature

Date

13:87-9.2 Notice to carrier of filing petition (Notice to Carrier)

Notice to Carrier of the Filing of a Representation Petition

This form provides notice to _____ (named carrier) _____ that a petition for representation has been filed by _____ (name of representative) _____ pursuant to N.J.S.A.

52:17B-196 to authorize joint negotiations by physicians and dentists with health benefit plan carriers and to qualify such joint negotiations and related joint activities for state action immunity under the federal antitrust laws.

- 1) List the representative's name, title, employer, and business address.

- 2) List each participating Physician's/dentist's name and business address

- 3) List each integrated practice group (IPG) or independent practice associate (IPA) to which each participating physician/dentist belongs, include the group's name, business address, type of legal organization and approximate number of physicians/dentists members.

- 4) List the proposed subject matter(s) to be discussed or negotiated with the identified health benefit carrier

- 5). List the products which the representative intends to negotiate on behalf of the negotiation group

6) List the specific contract terms and conditions to be negotiated and which of the categories set forth in N.J.S.A. 52:17B-199 encompasses each term or condition

13:87-9.3 Contract information form (CIF)

Contract Information Form

For Fee-Related Negotiations

Instructions: A separate form shall be completed and submitted for each participating physician and dentist. Participating physicians and dentists who practice the same specialty together in an integrated practice group, however, may submit their information in aggregated form on a single form.

1. This form provides information for (check one):

- one physician
- one dentist
- an entire single-specialty integrated practice group

(name of group _____)

- a single-specialty subset of a multi-specialty integrated practice group

(name of group _____)

2. List Name(s) of Physician(s)/Dentist(s) reporting on this form:

4. REVENUE OR PATIENT VISITS INFORMATION. Provide the percentage of your services purchased by each product for which you are proposing fee-related negotiations by completing the Revenue Table, below, with information for the last year for which data is available. If revenue information is unavailable, explain why, and complete the Patient Visits Table, below, in lieu of and to the extent that the data provided does not accurately reflect current trends in your practice or differs significantly from your historical practice trends, describe those differences.

PRODUCT: _____

REVENUE TABLE

		Year _____
A	Total Revenue from the practice of medicine or dentistry (all sources - commercial and government payers)	\$
B	Revenue from the practice of medicine or dentistry from all commercial payers	\$
C	Revenue from the Product	\$
D	• Percent of Total Revenue (Row C ÷ Row A	%
E	• Percent of Commercial Revenue (Row C ÷ Row B	%

PATIENT VISITS TABLE

		Year _____
A	Total number of patient visits (regardless of source of payment)	
B	Number of patient visits covered by commercial health insurance	
C	Number of patient visits covered by the Product	
D	• Percent of Total Patient Visits (Row C ÷ Row A	%
E	• Percent of Commercial Patient Visits (Row C ÷ Row B	%

5. Any other information demonstrating that the carrier has substantial market power in the purchase of physician services.