

The Ease of Creating a Joint Negotiations Law

Question: Is it legal for a group of competing dentists to join together as a group to collectively negotiate the terms of their individual participating provider agreements? Can individual dentists bolster their bargaining power when negotiating carrier participation contracts through a unified, group effort? The likely answer might be that such activity would violate anti-trust laws. But is that always true?

Many have concluded the aforementioned joint activity would likely run afoul of federal anti-trust laws. What may have been missing from that conclusion, however, is a somewhat obscure safe harbor in the form of state legislation.

State Legislation Allows Joint Negotiation

Setting aside voluminous legal narrative setting the stage for this approach, suffice it to say that embedded in all the trade laws, regulations and years of court cases is something known as the *State Action Doctrine*. Properly managed and executed, the doctrine creates a relatively safe avenue paving the way for dentists to join together to negotiate with insurers collectively. The good news is that it's rather simple to construct via state legislation. Such a law only needs two primary provisions:

- 1) A clearly articulated position statement adopted by the state; and,
- 2) Active state supervision.

Building the law is just that simple. A number of state legislative examples show how to establish the position statement and supervision required to satisfy the State Action Doctrine protection requirements.

The ADA has a number of examples available upon request.