

Union Calendar No. 325

104TH CONGRESS
2^D SESSION

H. R. 2925

[Report No. 104-646]

A BILL

To modify the application of the antitrust laws to health care provider networks that provide health care services; and for other purposes.

JUNE 27, 1996

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 1996

Mr. HYDE (for himself, Mr. ARCHER, Mr. WELDON of Florida, Mr. MCCOLLUM, Mr. GEKAS, Mr. COBLE, Mr. SMITH of Texas, Mr. HASTERT, Mr. SCHIFF, Mr. THOMAS, Mr. CANADY of Florida, Mr. INGLIS of South Carolina, Mr. GOODLATTE, Mr. BOUCHER, Mr. CRANE, Mr. SHAW, Mrs. JOHNSON of Connecticut, Mr. MCCRERY, Mr. CAMP, Mr. CAMPBELL, Mr. SAM JOHNSON of Texas, Mr. CHRISTENSEN, Mr. GANSKE, Mr. LIPINSKI, and Mr. HANCOCK) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 27, 1996

Additional sponsors: Mr. DAVIS, Mr. NORWOOD, Mr. ENSIGN, Ms. GREENE of Utah, Mr. HOEKSTRA, Mr. MORAN, Mr. PETRI, Mr. TALENT, Mr. LINDER, Mr. HUTCHINSON, Mr. MOORHEAD, Mrs. SMITH of Washington, Mr. EHLERS, Mr. COOLEY of Oregon, Mr. SCARBOROUGH, Mr. KNOLLENBERG, Mr. BARCIA, Mr. STUMP, Mr. TAYLOR of North Carolina, Mr. ZIMMER, Ms. DUNN of Washington, Mr. HOSTETTLER, Mr. SAXTON, Mr. FOX of Pennsylvania, Mr. BARR of Georgia, Mr. HAYES, Mr. PORTMAN, Mr. MICA, Mr. MCINTOSH, Mr. SALMON, Mr. COMBEST, Mr. CRAMER, Mr. PICKETT, Ms. PRYCE, Mr. LATHAM, Mr. SHADEGG, Mr. NUSSLE, Mr. THORNBERRY, Mr. DICKEY, Mr. CRAPO, Mr. BUNNING of Kentucky, Mr. GORDON, Mr. DUNCAN, Mr. SANFORD, Mr. BARTLETT of Maryland, Mr. BALLENGER, Mr. CUNNINGHAM, Mr. UPTON, Mr. PARKER, Mr. ZELIFF, Mr. HOBSON, Mr. WALSH, Mr. ROGERS, Mr. SOUDER, Mr. TAYLOR of Mississippi, Mr. CONDIT, Mr. FRELINGHUYSEN, Mr. GILLMOR, Mr. DEFazio, Mr. LIVINGSTON, Mr. KILDEE, Mrs. FOWLER, Mr. MANZULLO, Mr. YOUNG of Alaska, Mr. TORKILDSEN, Mr. GREENWOOD, Mr. NETHERCUTT, Mr. WHITFIELD, Mrs. VUCANOVICH, Mr. WICKER, Mr. SHAYS, Mr. FOLEY, Mr. GUTKNECHT, Mr. MINGE, Mr.

WELLER, Mr. STOCKMAN, Mr. WILSON, Mr. EHRLICH, Mr. STEARNS, Mrs. MYRICK, Mr. NEY, Mr. STENHOLM, Mr. VOLKMER, Mr. BONILLA, Mr. FORBES, Mr. CHRYSLER, Mr. WAMP, Mr. CASTLE, Mr. CALLAHAN, Mr. TEJEDA, Mr. MCKEON, Mr. LAZIO of New York, Mr. MONTGOMERY, Mr. LIGHTFOOT, Mr. PETERSON of Minnesota, Mr. PAYNE of Virginia, Mr. HEINEMAN, Mr. ENGLISH of Pennsylvania, Mr. GILMAN, Mr. JONES, Mr. BURR, Mr. HOLDEN, Mr. TATE, Mr. BALDACCI, Mrs. KELLY, Mr. HAYWORTH, Mr. OXLEY, Mr. LEWIS of Kentucky, Mr. PORTER, Mr. BROWNBACK, Mr. FUNDERBURK, Mr. JOHNSON of South Dakota, Mr. FROST, Mrs. CUBIN, Mr. COLLINS of Georgia, Mrs. CHENOWETH, Mr. BARRETT of Wisconsin, Mr. LONGLEY, Mr. DEAL of Georgia, Ms. HARMAN, Mr. KINGSTON, Mr. HILLIARD, Mr. HILLEARY, Ms. KAPTUR, Mr. FRISA, Mr. WATTS of Oklahoma, Mr. BILBRAY, Mr. COBURN, and Mrs. LINCOLN

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To modify the application of the antitrust laws to health care provider networks that provide health care services; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Antitrust Health Care
5 Advancement Act of 1996”.

6 **SEC. 2. APPLICATION OF ANTITRUST RULE OF REASON TO**

7 **HEALTH CARE PROVIDER NETWORKS.**

8 (a) **RULE OF REASON STANDARD.**—In any action
9 under the antitrust laws, or under any State law similar
10 to the antitrust laws—

1 (1) the conduct of a health care provider in ex-
2 changing with 1 or more other health care providers
3 information relating to costs, sales, profitability,
4 marketing, prices, or fees of any health care service
5 if—

6 (A) the exchange of such information is
7 solely for the purpose of establishing a health
8 care provider network and is reasonably re-
9 quired for such purpose, and

10 (B) such information is not used for any
11 other purpose,

12 (2) the conduct of a health care provider net-
13 work (including any health care provider who is a
14 member of such network and who is acting on behalf
15 of such network) in negotiating, making, or perform-
16 ing a contract (including the establishment and
17 modification of a fee schedule and the development
18 of a panel of physicians), to the extent such contract
19 is for the purpose of providing health care services
20 to individuals under the terms of a health benefit
21 plan, and

22 (3) the conduct of any member of such network
23 for the purpose of providing such health care serv-
24 ices under such contract to such extent,

1 shall not be deemed illegal per se. Such conduct shall be
2 judged on the basis of its reasonableness, taking into ac-
3 count all relevant factors affecting competition, including
4 the effects on competition in properly defined markets.

5 (b) DEFINITIONS.—For purposes of subsection (a):

6 (1) ANTITRUST LAWS.—The term “antitrust
7 laws” has the meaning given it in subsection (a) of
8 the first section of the Clayton Act (15 U.S.C. 12),
9 except that such term includes section 5 of the Fed-
10 eral Trade Commission Act (15 U.S.C. 45) to the
11 extent that such section 5 applies to unfair methods
12 of competition.

13 (2) HEALTH BENEFIT PLAN.—The term
14 “health benefit plan” means—

15 (A) a hospital or medical expense-incurred
16 policy or certificate,

17 (B) a hospital or medical service plan con-
18 tract,

19 (C) a health maintenance subscriber con-
20 tract, or

21 (D) a multiple employer welfare arrange-
22 ment or employee benefit plan (as defined
23 under the Employee Retirement Income Secu-
24 rity Act of 1974).

1 Such term includes a contract to provide health care
2 services under section 1876 or 1903(m) of the Social
3 Security Act.

4 (3) HEALTH CARE PROVIDER.—The term
5 “health care provider” means any individual or en-
6 tity that is engaged in the delivery of health care
7 services in a State and that is required by State law
8 or regulation to be licensed or certified by the State
9 to engage in the delivery of such services in the
10 State.

11 (4) HEALTH CARE SERVICE.—The term “health
12 care service” means any health care service for
13 which payment may be made under a health benefit
14 plan, including services related to the delivery or ad-
15 ministration of such service.

16 (5) HEALTH CARE PROVIDER NETWORK.—The
17 term “health care provider network” means an orga-
18 nization that—

19 (A) is organized by, operated by, and com-
20 posed of members who are health care providers
21 and for purposes that include providing health
22 care services,

23 (B) is funded in part by capital contribu-
24 tions made by the members of such organiza-
25 tion,

1 (C) with respect to each contract made by
2 such organization for the purpose of providing
3 a type of health care service to individuals
4 under the terms of a health benefit plan—

5 (i) requires all members of such orga-
6 nization who engage in providing such type
7 of health care service to agree to provide
8 health care services of such type under
9 such contract,

10 (ii) receives the compensation paid for
11 the health care services of such type pro-
12 vided under such contract by such mem-
13 bers, and

14 (iii) provides for the distribution of
15 such compensation,

16 (D) has established a program to review,
17 pursuant to written guidelines, the quality, effi-
18 ciency, and appropriateness of treatment meth-
19 ods and setting of services for all health care
20 providers and all patients participating in such
21 health benefit plan, along with internal proce-
22 dures to correct identified deficiencies relating
23 to such methods and such services,

24 (E) has established a program to monitor
25 and control utilization of health care services

1 provided under such health benefit plan, for the
2 purpose of improving efficient, appropriate care
3 and eliminating the provision of unnecessary
4 health care services,

5 (F) has established a management pro-
6 gram to coordinate the delivery of health care
7 services for all health care providers and all pa-
8 tients participating in such health benefit plan,
9 for the purpose of achieving efficiencies and en-
10 hancing the quality of health care services pro-
11 vided, and

12 (G) has established a grievance and appeal
13 process for such organization designed to review
14 and promptly resolve beneficiary or patient
15 grievances and complaints.

16 (6) STATE.—The term “State” has the mean-
17 ing given it in section 4G(2) of the Clayton Act (15
18 U.S.C. 15g(2)).

19 **SEC. 3. ISSUANCE OF GUIDELINES.**

20 Not later than 180 days after the date of the enact-
21 ment of this Act, the Attorney General and the Federal
22 Trade Commission jointly shall issue guidelines specifying
23 the enforcement policies and analytical principles that will
24 be applied by the Department of Justice and the Commis-
25 sion with respect to the operation of section 2.