

104TH CONGRESS
2D SESSION

H. R. 2976

To prohibit health plans from interfering with health care provider communications with their patients.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 1996

Mr. GANSKE (for himself, Mr. MARKEY, Mr. BARR of Georgia, Mr. BOUCHER, Mr. COBURN, Mr. DURBIN, Mr. GENE GREEN of Texas, Mr. JOHNSTON of Florida, Mr. KENNEDY of Massachusetts, Mr. KLECZKA, Ms. LOFGREN, Mr. McDERMOTT, Mrs. MEEK of Florida, Mr. MORAN, Mr. NADLER, Mr. SANDERS, Mr. SERRANO, Mrs. SMITH of Washington, Mr. STARK, Mr. STUDDS, Mr. TRAFICANT, Mr. WAXMAN, Mr. WHITFIELD, and Mr. WISE) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Ways and Means, Economic and Educational Opportunities, and Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prohibit health plans from interfering with health care provider communications with their patients.

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; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Patient Right To Know Act of 1996”.

1 (b) FINDINGS.—Congress finds the following:

2 (1) Patients cannot make appropriate health
3 care decisions without access to all relevant informa-
4 tion relating to those decisions.

5 (2) Restrictions on the ability of physicians and
6 other health care providers to provide full disclosure
7 of all relevant information to patients making health
8 care decisions violate the principles of informed con-
9 sent and the ethical standards of the health care
10 professions.

11 (3) Serious concerns have been raised about the
12 use by health plans of contractual clauses or policies
13 that interfere with communications between physi-
14 cians and other health care providers and their pa-
15 tients and the impact of such clauses and policies on
16 the quality of care received by those patients.

17 (4) The offering and operation of health plans
18 affects commerce among the States, health care pro-
19 viders located in one State serve patients who reside
20 in other States as well as that State, and, in order
21 to provide for uniform treatment of health care pro-
22 viders and patients among the States, it is necessary
23 to cover health plans operating in one State as well
24 as those operating among the several States.

1 **SEC. 2. PROHIBITION OF INTERFERENCE WITH CERTAIN**
2 **MEDICAL COMMUNICATIONS.**

3 (a) IN GENERAL.—

4 (1) PROHIBITION OF CONTRACTUAL PROVI-
5 SION.—An entity offering a health plan (as defined
6 in subsection (d)(2)) may not provide, as part of any
7 contract or agreement with a health care provider,
8 any restriction on or interference with any medical
9 communication, as defined in subsection (b).

10 (2) PROHIBITION OF ADVERSE ACTION.—An
11 entity offering a health plan may not take any of the
12 following actions against a health care provider on
13 the basis of a medical communication:

14 (A) Refusal to contract with the health
15 care provider.

16 (B) Termination or refusal to renew a con-
17 tract with the health care provider.

18 (C) Refusal to refer patients to or allow
19 others to refer patients to the health care pro-
20 vider.

21 (D) Refusal to compensate the health care
22 provider for covered services.

23 (E) Any other retaliatory action against
24 the health care provider.

25 (3) NULLIFICATION.—Any provision that is
26 prohibited under paragraph (1) is null and void.

1 (b) MEDICAL COMMUNICATION DEFINED.—In this
2 section, the term “medical communication”—

3 (1) means any communication, other than a
4 knowing and willful misrepresentation, made by the
5 health care provider—

6 (A) regarding the mental or physical
7 health care needs or treatment of a patient and
8 the provisions, terms, or requirements of the
9 health plan or another health plan relating to
10 such needs or treatment, and

11 (B) between—

12 (i) the provider and a current, former,
13 or prospective patient (or the guardian or
14 legal representative of a patient),

15 (ii) the provider and any employee or
16 representative of the entity offering such
17 plan, or

18 (iii) the provider and any employee or
19 representative of any State or Federal au-
20 thority with responsibility for the licensing
21 or oversight with respect to such entity or
22 plan; and

23 (2) includes communications concerning—

24 (A) any tests, consultations, and treatment
25 options,

1 (B) any risks or benefits associated with
2 such tests, consultations, and options,

3 (C) variation among any health care pro-
4 viders and any institutions providing such serv-
5 ices in experience, quality, or outcomes,

6 (D) the basis or standard for the decision
7 of an entity offering a health plan to authorize
8 or deny health care services or benefits,

9 (E) the process used by such an entity to
10 determine whether to authorize or deny health
11 care services or benefits, and

12 (F) any financial incentives or disincen-
13 tives provided by such an entity to a health care
14 provider that are based on service utilization.

15 (c) ENFORCEMENT THROUGH IMPOSITION OF CIVIL
16 MONEY PENALTY.—

17 (1) IN GENERAL.—Any entity that violates
18 paragraph (1) or (2) of subsection (a) shall be sub-
19 ject to a civil money penalty of—

20 (A) up to \$25,000 for each violation, or

21 (B) up to \$100,000 for each violation if
22 the Secretary determines that the entity has en-
23 gaged, within the 5 years immediately preceding
24 such violation, in a pattern of such violations.

1 (2) PROCEDURES.—The provisions of sub-
2 sections (c) through (l) of section 1128A of the So-
3 cial Security Act (42 U.S.C. 1320a–7a) shall apply
4 to civil money penalties under this paragraph in the
5 same manner as they apply to a penalty or proceed-
6 ing under section 1128A(a) of such Act.

7 (d) DEFINITIONS.—For purposes of this section:

8 (1) HEALTH CARE PROVIDER.—The term
9 “health care provider” means anyone licensed under
10 State law to provide health care services.

11 (2) HEALTH PLAN.—The term “health plan”
12 means any public or private health plan or arrange-
13 ment (including an employee welfare benefit plan)
14 which provides, or pays the cost of, health benefits,
15 and includes an organization of health care providers
16 that furnishes health services under a contract or
17 agreement with such a plan.

18 (3) SECRETARY.—The term “Secretary” means
19 Secretary of Health and Human Services.

20 (4) COVERAGE OF THIRD PARTY ADMINISTRA-
21 TORS.—In the case of a health plan that is an em-
22 ployee welfare benefit plan (as defined in section
23 3(1) of the Employee Retirement Income Security
24 Act of 1974), any third party administrator or other
25 person with responsibility for contracts with health

1 care providers under the plan shall be considered,
2 for purposes of this section, to be an entity offering
3 such health plan.

4 (e) NON-PREEMPTION OF STATE LAW.—A State may
5 establish or enforce requirements with respect to the sub-
6 ject matter of this section, but only if such requirements
7 are more protective of medical communications than the
8 requirements established under this section.

9 (f) CONSTRUCTION.—Nothing in this section shall be
10 construed as—

11 (1) as requiring an entity offering a health plan
12 to enter into or renew a contract or agreement with
13 any willing health care provider, or

14 (2) preventing an entity from acting on infor-
15 mation relating to treatment actually provided to a
16 patient or the failure of a health care provider to
17 comply with legal standards relating to the provision
18 of care.

19 (g) EFFECTIVE DATES.—

20 (1) CONTRACTS.—Subsection (a)(1) shall apply
21 to contracts or agreements entered into or renewed
22 on or after the date of the enactment of this Act,
23 and to contracts and agreements entered into before
24 such date as of 30 days after the date of the enact-
25 ment of this Act.

1 (2) RETALIATORY ACTIONS.—Subsection (a)(2)
2 shall apply to actions taken on or after the date of
3 the enactment of this Act, regardless of when the
4 communication on which the action is based oc-
5 curred.

6 (3) NULLIFICATION.—Subsection (a)(3) shall
7 apply to provisions as of the date of the enactment
8 of this Act.

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