

104TH CONGRESS
2D SESSION

H. R. 3222

To prohibit gag rule clauses, improper incentive programs, and indemnification clauses in health care insurance contracts and health care employment contracts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 1996

Mr. SANDERS (for himself, Mr. STARK, Ms. MCKINNEY, Mr. DELLUMS, Mr. HILLIARD, and Mr. FRAZER) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Ways and Means, and Economic and Educational Opportunities, 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 gag rule clauses, improper incentive programs, and indemnification clauses in health care insurance contracts and health care employment contracts, 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 “Hippocratic Oath and
5 Patient Protection Act of 1996”.

1 **SEC. 2. DUTIES OF A HEALTH CARRIER.**

2 Under a contract or agreement with a health care
3 provider or enrollee, a health carrier—

4 (1) shall not—

5 (A) prevent or limit a health care provid-
6 er's protected communication to a patient or
7 the public as described in section 3;

8 (B) operate an improper incentive plan as
9 described in section 4; or

10 (C) include indemnification clauses as de-
11 scribed in section 5; and

12 (2) shall disclose (in plain English understand-
13 able by a layperson) to a health care provider and
14 to an enrollee—

15 (A) a list of all services and benefits of-
16 fered under the health plan, including any serv-
17 ice or benefit maximum, limitation, or exclu-
18 sion;

19 (B) the procedures used in authorizing, ap-
20 proving, limiting, or denying services or benefits
21 under the health plan; and

22 (C) any health care provider incentive plan
23 as described in section 4(b) that exists under
24 the contract or agreement.

1 **SEC. 3. PROTECTED COMMUNICATION.**

2 (a) IN GENERAL.—Except as limited in subsection
3 (b), for purposes of section 2(1)(A) a protected commu-
4 nication is a communication of information relevant to the
5 care or course of treatment of a patient.

6 (b) LIMITATIONS.—Such a protected communication
7 does not include—

8 (1) a trade secret; or

9 (2) a knowing misrepresentation by a health
10 care provider.

11 **SEC. 4. IMPROPER HEALTH CARE PROVIDER INCENTIVE**
12 **PLAN.**

13 (a) IN GENERAL.—For purposes of section 2(1)(B),
14 a health care provider incentive plan is improper, unless
15 such plan meets the requirements of section 1876(i)(8)(A)
16 of the Social Security Act (42 U.S.C. 1395mm(i)(8)(A))
17 for physician incentive plans in contracts with eligible or-
18 ganizations under section 1876 of such Act.

19 (b) INCENTIVE PLAN DEFINED.—The term “health
20 care provider incentive plan” means any compensation or
21 other financial arrangement between a health carrier and
22 a health care provider that may directly or indirectly have
23 the effect of limiting services provided with respect to an
24 enrollee.

1 **SEC. 5. PROHIBITED INDEMNIFICATION CLAUSES.**

2 For purposes of section 2(1)(C), a prohibited indem-
3 nification clause is any provision to indemnify a health
4 carrier against liability from a civil action brought by, or
5 on behalf of, an enrollee or a health care provider for any
6 damage caused to the enrollee or the health care provider
7 by the health carrier.

8 **SEC. 6. ENFORCEMENT.**

9 (a) IN GENERAL.—The Secretary of Health and
10 Human Services may impose upon a health carrier who
11 violates a provision of this Act a civil money penalty of—

12 (1) up to \$25,000 for each violation, or

13 (2) up to \$100,000 for each violation if the Sec-
14 retary determines that the health carrier has en-
15 gaged, within the 5 years immediately preceding
16 such violation, in a pattern of such violations.

17 (b) PROCEDURES.—Subsections (c) through (l) of
18 section 1128A of the Social Security Act (42 U.S.C.
19 1320a–7a) apply to a civil penalty under this paragraph
20 in the same manner as they apply to a civil penalty under
21 section 1128A(a) of such Act.

22 **SEC. 7. PRIVATE CAUSE OF ACTION.**

23 Whoever is aggrieved by a violation of this Act may
24 in a civil action obtain appropriate relief.

1 **SEC. 8. REPORT TO CONGRESS.**

2 (a) IN GENERAL.—Not later than 1 year after the
3 date of the enactment of this Act, the Secretary of Health
4 and Human Services shall submit a report to Congress
5 that evaluates—

6 (1) the impact of this Act on health carriers,
7 health care providers, and enrollees; and

8 (2) the enforcement of this Act by the Sec-
9 retary.

10 (b) RECOMMENDATIONS.—The Secretary shall in-
11 clude in the report required under subsection (a) rec-
12 ommendations for such changes as may be needed to en-
13 sure compliance by health carriers with this Act.

14 **SEC. 9. DEFINITIONS.**

15 As used in this Act—

16 (1) the term “health plan” means any public or
17 private entity or program that provides for payments
18 for health care, including—

19 (A) a group health plan (as defined in sec-
20 tion 607 of the Employee Retirement Income
21 Security Act of 1974) or a multiple employer
22 welfare arrangement (as defined in section
23 3(40) of such Act) that provides health bene-
24 fits;

25 (B) any other health insurance arrange-
26 ment, including any arrangement consisting of

1 a hospital or medical expense incurred policy or
2 certificate, hospital or medical service plan con-
3 tract, or health maintenance organization sub-
4 scriber contract;

5 (C) workers' compensation or similar in-
6 surance to the extent that it relates to workers'
7 compensation medical benefits (as defined by
8 the Federal Trade Commission); and

9 (D) automobile medical insurance to the
10 extent that it relates to medical benefits (as de-
11 fined by the Federal Trade Commission);

12 (2) the term "health care provider" means a
13 person who contracts with a health carrier to provide
14 health care services to enrollees;

15 (3) the term "health carrier" means a person
16 who contracts or offers to contract on a risk-assum-
17 ing basis—

18 (A) to provide, deliver, or arrange for
19 health care services; or

20 (B) to pay for or reimburse any of the cost
21 of health care services; and

22 (4) the term "enrollee" means a person enrolled
23 under a health plan.

1 **SEC. 10. EFFECTIVE DATES.**

2 (a) Subsections 2(1) (A) and (C) shall take effect on
3 the date of the enactment of this Act, and apply to con-
4 tracts or agreements entered into or renewed before, on,
5 or after the date of the enactment of this Act.

6 (b) Subsections 2(1)(B) and 2(2) shall take effect 90
7 days after the date of the enactment of this Act, and apply
8 to contracts or agreements entered into or renewed before,
9 on, or after the date of the enactment of this Act.

○