

106TH CONGRESS
1ST SESSION

H. R. 1304

To ensure and foster continued patient safety and quality of care by making the antitrust laws apply to negotiations between groups of health care professionals and health plans and health insurance issuers in the same manner as such laws apply to collective bargaining by labor organizations under the National Labor Relations Act.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1999

Mr. CAMPBELL (for himself, Mr. CONYERS, Mr. MILLER of Florida, Mr. HOEFFEL, Mr. BAKER, Mr. LAFALCE, Mr. COOKSEY, Mr. PALLONE, Mr. NADLER, Mr. HORN, Mr. FROST, Mr. FILNER, Mr. BOUCHER, Mr. WEXLER, Mr. SCARBOROUGH, Ms. SCHAKOWSKY, Mr. SHOWS, Mr. SANDLIN, Mr. TOWNS, Mr. BLAGOJEVICH, Mr. BROWN of Ohio, Mr. PAUL, Mr. COBURN, Mr. GANSKE, Mr. DELAHUNT, Mr. ROHRBACHER, Mr. MCCOLLUM, and Mr. KLINK) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To ensure and foster continued patient safety and quality of care by making the antitrust laws apply to negotiations between groups of health care professionals and health plans and health insurance issuers in the same manner as such laws apply to collective bargaining by labor organizations under the National Labor Relations Act.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Quality Health-Care
3 Coalition Act of 1999”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) A large number of Americans receive their
7 health care coverage from managed health care
8 plans. This represents a 10-fold increase over the
9 last 20 years. Serious questions have been raised
10 about the quality of care patients are receiving
11 under these plans.

12 (2) Changes in the health care industry have
13 led to an increased concentration of health care
14 plans, including more than 162 mergers in the last
15 10 years.

16 (3) The McCarran-Ferguson Act has created an
17 enhanced opportunity for market power of insurance
18 companies in health care and has given such compa-
19 nies significant leverage over health care providers
20 and patients.

21 (4) Permitting health care professionals to ne-
22 gotiate collectively with health care plans will create
23 a more equal balance of negotiating power, will pro-
24 mote competition, and will enhance the quality of
25 patient care.

1 (5) Allowing health care professionals to nego-
2 tiate collectively with health care plans will not
3 change the professionals' ethical duty to continue to
4 provide medically necessary care to their patients.

5 **SEC. 3. APPLICATION OF THE ANTITRUST LAWS TO HEALTH**
6 **CARE PROFESSIONALS NEGOTIATING WITH**
7 **HEALTH PLANS.**

8 (a) IN GENERAL.—Any health care professionals who
9 are engaged in negotiations with a health plan regarding
10 the terms of any contract under which the professionals
11 provide health care items or services for which benefits
12 are provided under such plan shall, in connection with
13 such negotiations, be entitled to the same treatment under
14 the antitrust laws as the treatment to which bargaining
15 units which are recognized under the National Labor Rela-
16 tions Act are entitled in connection with such collective
17 bargaining. Such a professional shall, only in connection
18 with such negotiations, be treated as an employee engaged
19 in concerted activities and shall not be regarded as having
20 the status of an employer, independent contractor, mana-
21 gerial employee, or supervisor.

22 (b) PROTECTION FOR GOOD FAITH ACTIONS.—Ac-
23 tions taken in good faith reliance on subsection (a) shall
24 not be the subject under the antitrust laws of criminal

1 sanctions nor of any civil damages, fees, or penalties be-
2 yond actual damages incurred.

3 (c) LIMITATION.—The exemption provided in sub-
4 section (a) shall not confer any right to participate in any
5 collective cessation of service to patients not otherwise per-
6 mitted by law.

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

8 (1) ANTITRUST LAWS.—The term “antitrust
9 laws”—

10 (A) has the meaning given it in subsection
11 (a) of the first section of the Clayton Act (15
12 U.S.C. 12(a)), except that such term includes
13 section 5 of the Federal Trade Commission Act
14 (15 U.S.C. 45) to the extent such section 5 ap-
15 plies to unfair methods of competition, and

16 (B) includes any State law similar to the
17 laws referred to in subparagraph (A).

18 (2) HEALTH PLAN AND RELATED TERMS.—

19 (A) IN GENERAL.—The term “health plan”
20 means a group health plan, a health insurance
21 issuer that is offering health insurance cov-
22 erage, a Medicare+Choice organization that is
23 offering a Medicare+Choice plan, or a Medicaid
24 managed care entity offering benefits under
25 title XIX of the Social Security Act.

1 (B) HEALTH INSURANCE COVERAGE;
2 HEALTH INSURANCE ISSUER.—The terms
3 “health insurance coverage” and “health insur-
4 ance issuer” have the meanings given such
5 terms under paragraphs (1) and (2), respec-
6 tively, of section 733(b) of the Employee Retire-
7 ment Income Security Act of 1974 (29 U.S.C.
8 1191b(b)).

9 (C) GROUP HEALTH PLAN.—The term
10 “group health plan” has the meaning given that
11 term in section 733(a)(1) of the Employee Re-
12 tirement Income Security Act of 1974 (29
13 U.S.C. 1191b(a)(1)).

14 (D) MEDICARE+CHOICE ORGANIZATION;
15 MEDICARE+CHOICE PLAN.—The terms
16 “Medicare+Choice organization” and
17 “Medicare+Choice plan” have the meanings
18 given such terms in subsections (a)(1) and
19 (b)(1) of section 1859 of the Social Security
20 Act (42 U.S.C. 1395w–28).

21 (E) MEDICAID MANAGED CARE ENTITY.—
22 The term “Medicaid managed care entity” has
23 the meaning given the term “managed care en-
24 tity” under section 1932(a)(1)(B) of the Social
25 Security Act (42 U.S.C. 1396u–2(a)(1)(B)).

1 (3) HEALTH CARE PROFESSIONAL.—The term
2 “health care professional” means an individual who
3 provides health care items or services, treatment, as-
4 sistance with activities of daily living, or medications
5 to patients and who, to the extent required by State
6 or Federal law, possesses specialized training that
7 confers expertise in the provision of such items or
8 services, treatment, assistance, or medications.

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