

Union Calendar No. 342

106TH CONGRESS
2^D SESSION

H. R. 1304

[Report No. 106-625]

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. HOFFEL, 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. ROHRABACHER, Mr. MCCOLLUM, and Mr. KLINK) introduced the following bill; which was referred to the Committee on the Judiciary

MAY 18, 2000

Additional sponsors: Mr. NETHERCUTT, Ms. KILPATRICK, Ms. JACKSON-LEE of Texas, Mr. DAVIS of Virginia, Ms. LOFGREN, Mr. NORWOOD, Mr. SMITH of Texas, Ms. WOOLSEY, Mr. BONIOR, Mr. ANDREWS, Mr. WHITFIELD, Mr. WAMP, Mr. DOOLITTLE, Mr. GOODE, Mr. KILDEE, Mr. BARR of Georgia, Mr. DICKEY, Mr. BACHUS, Mr. LEACH, Mr. PICKERING, Mr. RAHALL, Mr. PORTER, Mr. SMITH of Michigan, Mr. THORNBERRY, Mr. DEAL of Georgia, Mr. BAIRD, Mrs. MCCARTHY of New York, Mr. DIAZ-BALART, Mr. GEORGE MILLER of California, Mr. KOLBE, Mr. ACKERMAN, Mr. MCGOVERN, Mr. WALSH, Mr. MCHUGH, Mr. FLETCHER, Mr. HANSEN, Mr. WELDON of Pennsylvania, Mr. RILEY, Ms. BALDWIN, Mr. THOMPSON of Mississippi, Mr. CANADY of Florida, Mr. RADANOVICH, Ms. DELAURO, Mr. MICA, Mr. PASCRELL, Mr. BERMAN, Mr. LUCAS of Oklahoma, Mr. WELDON of Florida, Mr. BARTON of Texas, Ms. PELOSI, Mrs. TAUSCHER, Mr. MANZULLO, Ms. HOOLEY of Oregon, Mr. FARR of California, Mr. WEINER, Ms. STABENOW, Mr. FORD, Mr.

THOMPSON of California, Mr. MALONEY of Connecticut, Mr. FORBES, Mr. OWENS, Mr. SMITH of New Jersey, Mr. BOEHLERT, Mr. COOK, Mr. McNULTY, Ms. RIVERS, Mr. PETERSON of Minnesota, Mr. INSLEE, Mr. OSE, Mr. GRAHAM, Mr. TURNER, Mr. ROTHMAN, Mr. DICKS, Mr. GARY MILLER of California, Mr. HOLT, Mr. LOBIONDO, Mrs. MORELLA, Ms. BERKLEY, Mr. PASTOR, Mr. GILMAN, Mr. BARCIA, Mr. WU, Mr. FRANKS of New Jersey, Mrs. KELLY, Mr. LAMPSON, Mr. TIAHRT, Mr. SNYDER, Mr. SHAW, Mr. ABERCROMBIE, Mr. MORAN of Virginia, Ms. MCCARTHY of Missouri, Mr. PRICE of North Carolina, Mr. ISAKSON, Mr. MASCARA, Mr. SCOTT, Mr. KENNEDY of Rhode Island, Ms. LEE, Mr. LEWIS of California, Mr. KIND, Ms. KAPTUR, Mr. WICKER, Mr. HOLDEN, Mr. GILCHREST, Ms. ESHOO, Mr. DUNCAN, Mr. CLAY, Mr. TANCREDO, Mr. NEY, Mr. MCINTOSH, Mr. JONES of North Carolina, Mr. BRADY of Pennsylvania, Mr. CLYBURN, Mr. SAXTON, Mr. MATSUI, Ms. DANNER, Mr. MCINTYRE, Mrs. CLAYTON, Ms. MCKINNEY, Mr. ISTOOK, Mr. HILL of Montana, Mr. BISHOP, Mr. RODRIGUEZ, Mrs. MALONEY of New York, Mr. WYNN, Mr. LUCAS of Kentucky, Mr. CUMMINGS, Mr. RYUN of Kansas, Mr. UDALL of New Mexico, Mr. VITTER, Mr. GORDON, Mr. PICKETT, Mr. WATKINS, Mr. VISCLOSKY, Mrs. LOWEY, Mr. WELLER, Mrs. ROUKEMA, Mr. MORAN of Kansas, Mrs. EMERSON, Mr. FATTAH, Mr. GIBBONS, Mr. UPTON, Mrs. CUBIN, Mr. MENENDEZ, Mr. PHELPS, Mr. KUYKENDALL, Mr. DIXON, Mr. UDALL of Colorado, Mr. GILLMOR, Mr. WISE, Mr. PAYNE, Mr. DEFazio, Mr. SAWYER, Mr. RANGEL, Mr. SHIMKUS, Mr. METCALF, Mr. HALL of Ohio, Mr. SKELTON, Mr. CALVERT, Mr. KANJORSKI, Mr. BORSKI, Mr. LATOURETTE, Mr. ENGEL, Mr. POMBO, Mr. CAMP, Mrs. WILSON, Mr. KUCINICH, Mr. TRAFICANT, Mr. HEFLEY, Mr. ADERHOLT, Ms. DEGETTE, Mr. GUTIERREZ, Mr. DOYLE, Mr. HILLIARD, Mr. EVANS, Mr. CRAMER, Mr. MURTHA, Mr. SANDERS, Mr. EVERETT, Mr. HINOJOSA, Mr. MCDERMOTT, Mr. GALLEGLY, Mrs. JONES of Ohio, Mrs. NAPOLITANO, Mr. STENHOLM, Mr. BACA, Ms. CARSON, Mr. BOSWELL, Mr. DINGELL, Mr. MEEKS of New York, Mr. PETRI, Mr. STRICKLAND, Mr. COYNE, Mr. HASTINGS of Florida, Mr. LEWIS of Georgia, and Mr. ENGLISH

Deleted sponsors: Mr. COBURN (added March 25, 1999; deleted October 14, 1999), and Mr. DELAHUNT (added March 25, 1999; deleted March 1, 2000)

MAY 18, 2000

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 25, 1999]

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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Quality Health-Care*
5 *Coalition Act of 2000”.*

6 **SEC. 2. APPLICATION OF THE ANTITRUST LAWS TO HEALTH**

7 **CARE PROFESSIONALS NEGOTIATING WITH**

8 **HEALTH PLANS.**

9 *(a) IN GENERAL.—Any health care professionals who*
10 *are engaged in negotiations with a health plan regarding*
11 *the terms of any contract under which the professionals pro-*
12 *vide health care items or services for which benefits are pro-*
13 *vided under such plan shall, in connection with such nego-*
14 *tiations, be entitled to the same treatment under the anti-*
15 *trust laws as the treatment to which bargaining units which*
16 *are recognized under the National Labor Relations Act are*
17 *entitled in connection with such collective bargaining. Such*
18 *a professional shall, only in connection with such negotia-*
19 *tions, be treated as an employee engaged in concerted activi-*
20 *ties and shall not be regarded as having the status of an*

1 *employer, independent contractor, managerial employee, or*
2 *supervisor.*

3 **(b) PROTECTION FOR GOOD FAITH ACTIONS.**—*Actions*
4 *taken in good faith reliance on subsection (a) shall not be*
5 *the subject under the antitrust laws of criminal sanctions*
6 *nor of any civil damages, fees, or penalties beyond actual*
7 *damages incurred.*

8 **(c) LIMITATION.**—

9 **(1) NO NEW RIGHT FOR COLLECTIVE CESSATION**
10 **OF SERVICE.**—*The exemption provided in subsection*
11 *(a) shall not confer any new right to participate in*
12 *any collective cessation of service to patients not al-*
13 *ready permitted by existing law.*

14 **(2) NO CHANGE IN NATIONAL LABOR RELATIONS**
15 **ACT.**—*This section applies only to health care profes-*
16 *sionals excluded from the National Labor Relations*
17 *Act. Nothing in this section shall be construed as*
18 *changing or amending any provision of the National*
19 *Labor Relations Act, or as affecting the status of any*
20 *group of persons under that Act.*

21 **(d) 3-YEAR SUNSET.**—*The exemption provided in sub-*
22 *section (a) shall only apply to conduct occurring during*
23 *the 3-year period beginning on the date of the enactment*
24 *of this Act and shall continue to apply for 1 year after the*

1 *end of such period to contracts entered into before the end*
2 *of such period.*

3 (e) *LIMITATION ON EXEMPTION.—Nothing in this sec-*
4 *tion shall exempt from the application of the antitrust laws*
5 *any agreement or otherwise unlawful conspiracy that ex-*
6 *cludes, limits the participation or reimbursement of, or oth-*
7 *erwise limits the scope of services to be provided by any*
8 *health care professional or group of health care professionals*
9 *with respect to the performance of services that are within*
10 *their scope of practice as defined or permitted by relevant*
11 *law or regulation.*

12 (f) *NO EFFECT ON TITLE VI OF CIVIL RIGHTS ACT*
13 *OF 1964.—Nothing in this section shall be construed to af-*
14 *fect the application of title VI of the Civil Rights Act of*
15 *1964.*

16 (g) *NO APPLICATION TO FEDERAL PROGRAMS.—Noth-*
17 *ing in this section shall apply to negotiations between*
18 *health care professionals and health plans pertaining to*
19 *benefits provided under any of the following:*

20 (1) *The medicare program under title XVIII of*
21 *the Social Security Act (42 U.S.C. 1395 et seq.).*

22 (2) *The medicaid program under title XIX of the*
23 *Social Security Act (42 U.S.C. 1396 et seq.).*

24 (3) *The SCHIP program under title XXI of the*
25 *Social Security Act (42 U.S.C. 1397aa et seq.).*

1 (4) Chapter 55 of title 10, United States Code
2 (relating to medical and dental care for members of
3 the uniformed services).

4 (5) Chapter 17 of title 38, United States Code
5 (relating to Veterans' medical care).

6 (6) Chapter 89 of title 5, United States Code (re-
7 lating to the Federal employees' health benefits pro-
8 gram).

9 (7) The Indian Health Care Improvement Act
10 (25 U.S.C. 1601 et seq.).

11 (h) *GENERAL ACCOUNTING OFFICE STUDY AND RE-*
12 *PORT.—The Comptroller General of the United States shall*
13 *conduct a study on the impact of enactment of this section*
14 *during the 6-month period beginning with the third year*
15 *of the 3-year period described in subsection (d). Not later*
16 *than the end of such 6-month period the Comptroller Gen-*
17 *eral shall submit to Congress a report on such study and*
18 *shall include in the report such recommendations on the*
19 *extension of this section (and changes that should be made*
20 *in making such extension) as the Comptroller General*
21 *deems appropriate.*

22 (i) *DEFINITIONS.—For purposes of this section:*

23 (1) *ANTITRUST LAWS.—The term “antitrust*
24 *laws”—*

1 (A) has the meaning given it in subsection
2 (a) of the first section of the Clayton Act (15
3 U.S.C. 12(a)), except that such term includes sec-
4 tion 5 of the Federal Trade Commission Act (15
5 U.S.C. 45) to the extent such section 5 applies to
6 unfair methods of competition, and

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

9 (2) *HEALTH PLAN AND RELATED TERMS.*—

10 (A) *IN GENERAL.*—The term “health plan”
11 means a group health plan or a health insurance
12 issuer that is offering health insurance coverage.

13 (B) *HEALTH INSURANCE COVERAGE;*
14 *HEALTH INSURANCE ISSUER.*—The terms “health
15 insurance coverage” and “health insurance
16 issuer” have the meanings given such terms
17 under paragraphs (1) and (2), respectively, of
18 section 733(b) of the Employee Retirement In-
19 come Security Act of 1974 (29 U.S.C. 1191b(b)).

20 (C) *GROUP HEALTH PLAN.*—The term
21 “group health plan” has the meaning given that
22 term in section 733(a)(1) of the Employee Re-
23 tirement Income Security Act of 1974 (29 U.S.C.
24 1191b(a)(1)).

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 *stance 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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