

118TH CONGRESS
1ST SESSION

H. R. 2861

To require the Government Accountability Office to evaluate the effects of anticompetitive contracting clauses in contracts between health insurers and health care providers and to determine actions taken by the Federal Trade Commission and the Department of Justice relating to the use of such clauses in such contracts and to assess their ability to effectively enforce the Federal antitrust laws with respect to such use.

IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2023

Mrs. SPARTZ introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, 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 require the Government Accountability Office to evaluate the effects of anticompetitive contracting clauses in contracts between health insurers and health care providers and to determine actions taken by the Federal Trade Commission and the Department of Justice relating to the use of such clauses in such contracts and to assess their ability to effectively enforce the Federal antitrust laws with respect to such use.

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 “Addressing Anti-Com-
3 petitive Health Care Contract Clauses Act”.

4 **SEC. 2. GAO STUDY.**

5 (a) STUDY.—Not later than 18 months after the date
6 of the enactment of this Act, the Comptroller General of
7 the United States, in coordination with the Federal Trade
8 Commission and the Assistant Attorney General of the
9 Antitrust Division of the Department of Justice, shall
10 carry out a study that—

11 (1) evaluates the effect of anticompetitive con-
12 tract clauses known as anti-steering clauses, anti-
13 tiering clauses, all-or-nothing clauses, and gag
14 clauses in contracts between health insurers and
15 health care providers, including the effects such con-
16 tracts have on consolidation in the health care indus-
17 try, prices paid by consumers for medical services,
18 and consumer access to health care,

19 (2) contains a list of all actions the Federal
20 Trade Commission and the Department of Justice
21 have taken directly or indirectly related to use of
22 such contract clauses in contracts between health in-
23 surers and health care providers,

24 (3) contains an assessment of whether the Fed-
25 eral Trade Commission and the Department of Jus-
26 tice have the resources and the capability to effec-

1 tively enforce the Federal antitrust laws as applied
2 to the use of such clauses in such contracts, and

3 (4) includes recommendations for legislative or
4 administrative actions if necessary to increase such
5 resources.

6 (b) REPORT.—The report containing the results of
7 the study carried out under subsection (a) shall be sub-
8 mitted timely by the Comptroller General as follows:

9 (1) To—

10 (A) the Committee on Energy and Com-
11 merce,

12 (B) the Committee on Ways and Means,

13 (C) the Committee on Education and the
14 Workforce, and

15 (D) the Committee on the Judiciary,
16 of the House of Representatives.

17 (2) To—

18 (A) The Committee on Health, Education,
19 Labor, and Pensions, and

20 (B) The Committee on the Judiciary,
21 of the Senate.

22 **SEC. 3. DEFINITIONS.**

23 For purposes of this Act:

1 (1) ALL-OR-NOTHING CLAUSE.—The term “all-
2 or-nothing clause” means a provision of a health
3 care contract that requires—

4 (A) a health insurance carrier or health
5 plan administrator to include all members of a
6 health care provider in a network plan; or

7 (B) a health insurance carrier or health
8 plan administrator to enter into an additional
9 contract with an affiliate of the health care pro-
10 vider as a condition of entering into a contract
11 with such health care provider.

12 (2) ANTI-STEERING CLAUSE.—The term “anti-
13 steering clause” means a provision of a health care
14 contract that restricts the ability of a health insur-
15 ance carrier or a health plan administrator from en-
16 couraging an enrollee to obtain a health care service
17 from a competitor of the hospital or health system,
18 including offering incentives to encourage enrollees
19 to utilize specific health care providers.

20 (3) ANTI-TIERING CLAUSE.—The term “anti-
21 tiering clause” means a provision in a health care
22 contract that—

23 (A) restricts the ability of a health insur-
24 ance carrier or a health plan administrator to

1 introduce or modify a tiered network plan or
2 assign health care providers into tiers; or

3 (B) requires the health insurance carrier
4 or health plan administrator to place all mem-
5 bers of a health care provider in the same tier
6 of a tiered network plan.

7 (4) GAG CLAUSE.—The term “gag clause”
8 means a provision of a health care contract that—

9 (A) restricts the ability of a health insur-
10 ance carrier, a health plan administrator, or a
11 health care provider to disclose a price or qual-
12 ity information, including the allowed amount,
13 negotiated rates or discounts, fees for services,
14 or any other claim-related financial obligations
15 included in the provider contract to—

16 (i) a governmental entity as author-
17 ized by law,

18 (ii) its contractors or agents,

19 (iii) an enrollee,

20 (iv) a treating health care provider of
21 an enrollee,

22 (v) a plan sponsor, or

23 (vi) potential eligible enrollees and
24 plan sponsors; or

1 (B) restricts the ability of a health insur-
2 ance carrier, a health plan administrator, or a
3 health care provider to disclose out-of-pocket
4 costs to an enrollee.

5 (5) TIERED NETWORK PLAN.—The term
6 “tiered network plan” means a health benefit plan
7 that sorts some or all types of health care providers
8 into specific groups to which different provider reim-
9 bursement, enrollee cost sharing, health care pro-
10 vider access requirements, or a combination thereof,
11 are applied for the same services.

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