

105TH CONGRESS  
1ST SESSION

# H. R. 415

To modify the application of the antitrust laws to health care provider networks that provide health care services, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 1997

Mr. HYDE (for himself, Mr. ARCHER, Mr. THOMAS, Mr. COBLE, Mr. INGLIS of South Carolina, Mr. MCCOLLUM, Mr. GOODLATTE, Mr. CANADY of Florida, Mr. BONO, Mr. CAMPBELL, Mr. SHAW, Mr. MCCRERY, Mr. CRANE, Mr. DEAL of Georgia, and Mr. LINDER) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To modify the application of the antitrust laws to health care provider networks that provide health care services, 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       This Act may be cited as the “Antitrust Health Care  
4       Advancement Act of 1997”.

1 **SEC. 2. APPLICATION OF ANTITRUST RULE OF REASON TO**  
2 **HEALTH CARE PROVIDER NETWORKS.**

3 (a) **RULE OF REASON STANDARD.**—In any action  
4 under the antitrust laws, or under any State law similar  
5 to the antitrust laws—

6 (1) the conduct of a health care provider in ex-  
7 changing with 1 or more other health care providers  
8 information relating to costs, sales, profitability,  
9 marketing, prices, or fees of any health care service  
10 if—

11 (A) the exchange of such information is  
12 solely for the purpose of establishing a health  
13 care provider network and is reasonably re-  
14 quired for such purpose, and

15 (B) such information is not used for any  
16 other purpose,

17 (2) the conduct of a health care provider net-  
18 work (including any health care provider who is a  
19 member of such network and who is acting on behalf  
20 of such network) in negotiating, making, or perform-  
21 ing a contract (including the establishment and  
22 modification of a fee schedule and the development  
23 of a panel of physicians), to the extent such contract  
24 is for the purpose of providing health care services  
25 to individuals under the terms of a health benefit  
26 plan, and

1           (3) the conduct of any member of such network  
2           for the purpose of providing such health care serv-  
3           ices under such contract to such extent,  
4 shall not be deemed illegal per se. Such conduct shall be  
5 judged on the basis of its reasonableness, taking into ac-  
6 count all relevant factors affecting competition, including  
7 the effects on competition in properly defined markets.

8           (b) DEFINITIONS.—For purposes of subsection (a):

9           (1) ANTITRUST LAWS.—The term “antitrust  
10          laws” has the meaning given it in subsection (a) of  
11          the first section of the Clayton Act (15 U.S.C. 12),  
12          except that such term includes section 5 of the Fed-  
13          eral Trade Commission Act (15 U.S.C. 45) to the  
14          extent that such section 5 applies to unfair methods  
15          of competition.

16          (2) HEALTH BENEFIT PLAN.—The term  
17          “health benefit plan” means—

18                 (A) a hospital or medical expense-incurred  
19                 policy or certificate,

20                 (B) a hospital or medical service plan con-  
21                 tract,

22                 (C) a health maintenance subscriber con-  
23                 tract, or

24                 (D) a multiple employer welfare arrange-  
25                 ment or employee benefit plan (as defined

1           under the Employee Retirement Income Secu-  
2           rity Act of 1974).

3           Such term includes a contract to provide health care  
4           services under section 1876 or 1903(m) of the Social  
5           Security Act.

6           (3) HEALTH CARE PROVIDER.—The term  
7           “health care provider” means any individual or en-  
8           tity that is engaged in the delivery of health care  
9           services in a State and that is required by State law  
10          or regulation to be licensed or certified by the State  
11          to engage in the delivery of such services in the  
12          State.

13          (4) HEALTH CARE SERVICE.—The term “health  
14          care service” means any health care service for  
15          which payment may be made under a health benefit  
16          plan, including services related to the delivery or ad-  
17          ministration of such service.

18          (5) HEALTH CARE PROVIDER NETWORK.—The  
19          term “health care provider network” means an orga-  
20          nization that—

21                  (A) is organized by, operated by, and com-  
22                  posed of members who are health care providers  
23                  and for purposes that include providing health  
24                  care services,

1 (B) is funded in part by capital contribu-  
2 tions made by the members of such organiza-  
3 tion,

4 (C) with respect to each contract made by  
5 such organization for the purpose of providing  
6 a type of health care service to individuals  
7 under the terms of a health benefit plan—

8 (i) requires all members of such orga-  
9 nization who engage in providing such type  
10 of health care service to agree to provide  
11 health care services of such type under  
12 such contract,

13 (ii) receives the compensation paid for  
14 the health care services of such type pro-  
15 vided under such contract by such mem-  
16 bers, and

17 (iii) provides for the distribution of  
18 such compensation,

19 (D) has established a program to review,  
20 pursuant to written guidelines, the quality, effi-  
21 ciency, and appropriateness of treatment meth-  
22 ods and setting of services for all health care  
23 providers and all patients participating in such

1 health benefit plan, along with internal proce-  
2 dures to correct identified deficiencies relating  
3 to such methods and such services,

4 (E) has established a program to monitor  
5 and control utilization of health care services  
6 provided under such health benefit plan, for the  
7 purpose of improving efficient, appropriate care  
8 and eliminating the provision of unnecessary  
9 health care services,

10 (F) has established a management pro-  
11 gram to coordinate the delivery of health care  
12 services for all health care providers and all pa-  
13 tients participating in such health benefit plan,  
14 for the purpose of achieving efficiencies and en-  
15 hancing the quality of health care services pro-  
16 vided, and

17 (G) has established a grievance and appeal  
18 process for such organization designed to review  
19 and promptly resolve beneficiary or patient  
20 grievances and complaints.

21 (6) STATE.—The term “State” has the mean-  
22 ing given it in section 4G(2) of the Clayton Act (15  
23 U.S.C. 15g(2)).

1 **SEC. 3. ISSUANCE OF GUIDELINES.**

2       Not later than 180 days after the date of the enact-  
3 ment of this Act, the Attorney General and the Federal  
4 Trade Commission jointly shall issue guidelines specifying  
5 the enforcement policies and analytical principles that will  
6 be applied by the Department of Justice and the Commis-  
7 sion with respect to the operation of section 2.

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