

110TH CONGRESS
1ST SESSION

S. 2161

To ensure and foster continued patient safety and quality of care by making the antitrust laws apply to negotiations between groups of independent pharmacies and health plans and health insurance issuers (including health plans under parts C and D of the Medicare Program) in the same manner as such laws apply to protected activities under the National Labor Relations Act.

IN THE SENATE OF THE UNITED STATES

OCTOBER 15, 2007

Mr. ISAKSON (for himself, Mr. JOHNSON, and Mr. GRAHAM) introduced the following bill; which was read twice and 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 independent pharmacies and health plans and health insurance issuers (including health plans under parts C and D of the Medicare Program) in the same manner as such laws apply to protected activities 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 “Community Pharmacy
3 Fairness Act of 2007”.

4 **SEC. 2. APPLICATION OF THE ANTITRUST LAWS TO INDE-
5 PENDENT PHARMACIES NEGOTIATING WITH
6 HEALTH PLANS.**

7 (a) IN GENERAL.—Any independent pharmacies who
8 are engaged in negotiations with a health plan regarding
9 the terms of any contract under which the pharmacies pro-
10 vide health care items or services for which benefits are
11 provided under such plan shall, in connection with such
12 negotiations, be entitled to the same treatment under the
13 antitrust laws as the treatment to which bargaining units
14 which are recognized under the National Labor Relations
15 Act (29 U.S.C. 151 et seq.) are entitled in connection with
16 activities described in section 7 of such Act (29 U.S.C.
17 157). Such a pharmacy shall, only in connection with such
18 negotiations, be treated as an employee engaged in con-
19 certed activities and shall not be regarded as having the
20 status of an employer, independent contractor, managerial
21 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
25 sanctions nor of any civil damages, fees, or penalties be-
26 yond actual damages incurred.

1 (c) NO CHANGE IN NATIONAL LABOR RELATIONS
2 ACT.—This section applies only to independent phar-
3 macies excluded from the National Labor Relations Act.
4 Nothing in this section shall be construed as changing or
5 amending any provision of the National Labor Relations
6 Act, or as affecting the status of any group of persons
7 under that Act.

8 (d) EFFECTIVE DATE.—The exemption provided in
9 subsection (a) shall apply to conduct occurring beginning
10 on the date of the enactment of this Act.

11 (e) LIMITATION ON EXEMPTION.—Nothing in this
12 section shall exempt from the application of the antitrust
13 laws any agreement or otherwise unlawful conspiracy that
14 excludes, limits the participation or reimbursement of, or
15 otherwise limits the scope of services to be provided by
16 any independent pharmacy or group of independent phar-
17 macies with respect to the performance of services that
18 are within their scope of practice as defined or permitted
19 by relevant law or regulation.

20 (f) NO EFFECT ON TITLE VI OF CIVIL RIGHTS ACT
21 OF 1964.—Nothing in this section shall be construed to
22 affect the application of title VI of the Civil Rights Act
23 of 1964.

24 (g) NO APPLICATION TO SPECIFIED FEDERAL PRO-
25 GRAMS.—Nothing in this section shall apply to negotia-

1 tions between independent pharmacies and health plans
 2 pertaining to benefits provided under any of the following:

3 (1) The Medicaid Program under title XIX of
 4 the Social Security Act (42 U.S.C. 1396 et seq.).

5 (2) The State Children’s Health Insurance Pro-
 6 gram (SCHIP) under title XXI of the Social Secu-
 7 rity Act (42 U.S.C. 1397aa et seq.).

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

11 (4) Chapter 17 of title 38, United States Code
 12 (relating to Veterans’ medical care).

13 (5) Chapter 89 of title 5, United States Code
 14 (relating to the Federal employees’ health benefits
 15 program).

16 (6) The Indian Health Care Improvement Act
 17 (25 U.S.C. 1601 et seq.).

18 (h) DEFINITIONS.—For purposes of this section:

19 (1) ANTITRUST LAWS.—The term “antitrust
 20 laws”—

21 (A) has the meaning given it in subsection
 22 (a) of the first section of the Clayton Act (15
 23 U.S.C. 12(a)), except that such term includes
 24 section 5 of the Federal Trade Commission Act

1 (15 U.S.C. 45) to the extent such section 5 ap-
2 plies to unfair methods of competition; and

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

5 (2) HEALTH PLAN AND RELATED TERMS.—

6 (A) IN GENERAL.—The term “health
7 plan”—

8 (i) means a group health plan or a
9 health insurance issuer that is offering
10 health insurance coverage;

11 (ii) includes a prescription drug plan
12 offered under part D of title XVIII of the
13 Social Security Act and a Medicare Advan-
14 tage plan offered under part C of such
15 title; and

16 (iii) includes any entity that con-
17 tracts with such a plan or issuer for the
18 administering of services under the plan or
19 coverage.

20 (B) HEALTH INSURANCE COVERAGE;
21 HEALTH INSURANCE ISSUER.—The terms
22 “health insurance coverage” and “health insur-
23 ance issuer” have the meanings given such
24 terms under paragraphs (1) and (2), respec-
25 tively, of section 733(b) of the Employee Retire-

1 ment Income Security Act of 1974 (29 U.S.C.
2 1191b(b)).

3 (C) GROUP HEALTH PLAN.—The term
4 “group health plan” has the meaning given that
5 term in section 733(a)(1) of the Employee Re-
6 tirement Income Security Act of 1974 (29
7 U.S.C. 1191b(a)(1)).

8 (3) INDEPENDENT PHARMACY.—The term
9 “independent pharmacy” means a pharmacy which
10 is not owned (or operated) by a publicly traded com-
11 pany. For purposes of the previous sentence, the
12 term “publicly traded company” means a company
13 that is an issuer within the meaning of section
14 2(a)(7) of the Sarbanes-Oxley Act of 2002 (15
15 U.S.C. 7201(a)(7)).

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