

110TH CONGRESS
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S. 885

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 in the same manner as such laws apply to collective bargaining by labor organizations under the National Labor Relations Act.

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2007

Mr. ISAKSON 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 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 “Community Pharmacy
5 Fairness Act of 2007”.

1 **SEC. 2. APPLICATION OF THE ANTITRUST LAWS TO INDE-**
2 **PENDENT PHARMACIES NEGOTIATING WITH**
3 **HEALTH PLANS.**

4 (a) IN GENERAL.—Any independent pharmacies who
5 are engaged in negotiations with a health plan regarding
6 the terms of any contract under which the pharmacies pro-
7 vide health care items or services for which benefits are
8 provided under such plan shall, in connection with such
9 negotiations, be entitled to the same treatment under the
10 antitrust laws as the treatment to which bargaining units
11 which are recognized under the National Labor Relations
12 Act are entitled in connection with such collective bar-
13 gaining. Such a pharmacy shall, only in connection with
14 such negotiations, be treated as an employee engaged in
15 concerted activities and shall not be regarded as having
16 the status of an employer, independent contractor, mana-
17 gerial employee, or supervisor.

18 (b) PROTECTION FOR GOOD FAITH ACTIONS.—Ac-
19 tions taken in good faith reliance on subsection (a) shall
20 not be the subject under the antitrust laws of criminal
21 sanctions nor of any civil damages, fees, or penalties be-
22 yond actual damages incurred.

23 (c) LIMITATION.—

24 (1) NO NEW RIGHT FOR COLLECTIVE CES-
25 SATION OF SERVICE.—The exemption provided in
26 subsection (a) shall not confer any new right to par-

1 participate in any collective cessation of service to pa-
2 tients not already permitted by existing law.

3 (2) NO CHANGE IN NATIONAL LABOR RELA-
4 TIONS ACT.—This section applies only to inde-
5 pendent pharmacies excluded from the National
6 Labor Relations Act. Nothing in this section shall be
7 construed as changing or amending any provision of
8 the National Labor Relations Act, or as affecting
9 the status of any group of persons under that Act.

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

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

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

1 (g) NO APPLICATION TO FEDERAL PROGRAMS.—

2 Nothing in this section shall apply to negotiations between
3 independent pharmacies and health plans pertaining to
4 benefits provided under any of the following:

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

7 (2) The SCHIP program under title XXI of the
8 Social Security Act (42 U.S.C. 1397aa et seq.).

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

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

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

17 (6) The Indian Health Care Improvement Act
18 (25 U.S.C. 1601 et seq.).

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

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

22 (A) has the meaning given it in subsection
23 (a) of the first section of the Clayton Act (15
24 U.S.C. 12(a)), except that such term includes
25 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 plan”
 7 means a group health plan or a health insur-
 8 ance issuer that is offering health insurance
 9 coverage.

10 (B) HEALTH INSURANCE COVERAGE;
 11 HEALTH INSURANCE ISSUER.—The terms
 12 “health insurance coverage” and “health insur-
 13 ance issuer” have the meanings given such
 14 terms under paragraphs (1) and (2), respec-
 15 tively, of section 733(b) of the Employee Retire-
 16 ment Income Security Act of 1974 (29 U.S.C.
 17 1191b(b)).

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

23 (3) INDEPENDENT PHARMACY.—The term
 24 “independent pharmacy” means a pharmacy which
 25 is not owned (or operated) by a publicly traded com-

1 pany. For purposes of the previous sentence, the
2 term “publicly traded company” means a company
3 that is an issuer within the meaning of section
4 2(a)(7) of the Sarbanes-Oxley Act of 2002 (15
5 U.S.C. 7201(a)(7)).

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