

111TH CONGRESS  
1ST SESSION

# H. R. 1493

To ensure and foster continued patient safety and quality of care by exempting health care professionals from the Federal antitrust laws in their negotiations with health plans and health insurance issuers.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2009

Mr. PAUL (for himself and Mr. PRICE of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To ensure and foster continued patient safety and quality of care by exempting health care professionals from the Federal antitrust laws in their negotiations with health plans and health insurance issuers.

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 2009”.

6        **SEC. 2. FINDINGS.**

7        Congress finds the following:

1           (1) According to a 2008 survey by the Henry  
2 J. Kaiser Family Foundation, 98 percent of Ameri-  
3 cans who receive their health care through their em-  
4 ployer are enrolled in some form of a managed  
5 health care plan, up from 27 percent in 1987. Seri-  
6 ous questions have been raised about the quality of  
7 care patients are receiving under these plans.

8           (2) Changes in the health care industry have  
9 led to an increased concentration of health care  
10 plans, including approximately 400 mergers in the  
11 last decade. This enhanced concentration has given  
12 health care plans significant leverage over health  
13 care providers and patients.

14           (3) Antitrust laws which prohibit health care  
15 professionals from negotiating freely with health  
16 care plans infringe on the health care professionals'  
17 constitutionally protected rights of freedom of asso-  
18 ciation and contract.

19           (4) Repealing Federal laws which prohibit med-  
20 ical professionals from negotiating collectively with  
21 health care plans will create a more equal balance of  
22 negotiating power, will promote cooperation, and will  
23 enhance the quality of patient care.

24           (5) Repealing Federal laws which prohibit med-  
25 ical professionals from negotiating collectively with

1 health care plans will not change the professionals  
2 ethical duty to continue to provide medically nec-  
3 essary care to their patients.

4 **SEC. 3. APPLICATION OF THE FEDERAL ANTITRUST LAWS**  
5 **TO HEALTH CARE PROFESSIONALS NEGOTI-**  
6 **ATING WITH HEALTH PLANS.**

7 (a) IN GENERAL.—Any health care professionals who  
8 are engaged in negotiations with a health plan regarding  
9 the terms of any contract under which the professionals  
10 provide health care items or services for which benefits  
11 are provided under such plan shall, in connection with  
12 such negotiations, be exempt from the Federal antitrust  
13 laws.

14 (b) LIMITATION.—

15 (1) NO NEW RIGHT FOR COLLECTIVE CES-  
16 SATION OF SERVICE.—The exemption provided in  
17 subsection (a) shall not confer any new right to par-  
18 ticipate in any collective cessation of service to pa-  
19 tients not already permitted by existing law.

20 (2) NO CHANGE IN NATIONAL LABOR RELA-  
21 TIONS ACT.—This section applies only to health care  
22 professionals excluded from the National Labor Re-  
23 lations Act. Nothing in this section shall be con-  
24 strued as changing or amending any provision of the

1 National Labor Relations Act, or as affecting the  
2 status of any group of persons under that Act.

3 (c) NO APPLICATION TO FEDERAL PROGRAMS.—

4 Nothing in this section shall apply to negotiations between  
5 health care professionals and health plans pertaining to  
6 benefits provided under any of the following:

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

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

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

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

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

18 (6) Chapter 89 of title 5, United States Code  
19 (relating to the Federal employees' health benefits  
20 program).

21 (7) The Indian Health Care Improvement Act  
22 (25 U.S.C. 1601 et seq.).

23 (d) DEFINITIONS.—For purposes of this section:

24 (1) FEDERAL ANTITRUST LAWS.—The term  
25 “Federal antitrust laws” has the meaning the term

1 “antitrust laws” in subsection (a) of the first section  
2 of the Clayton Act (15 U.S.C. 12(a)), except that  
3 such term includes section 5 of the Federal Trade  
4 Commission Act (15 U.S.C. 45) to the extent such  
5 section 5 applies to unfair methods of competition.

6 (2) HEALTH PLAN AND RELATED TERMS.—

7 (A) IN GENERAL.—The term “health plan”  
8 means a group health plan or a health insur-  
9 ance issuer that is offering health insurance  
10 coverage.

11 (B) HEALTH INSURANCE COVERAGE;  
12 HEALTH INSURANCE ISSUER.—The terms  
13 “health insurance coverage” and “health insur-  
14 ance issuer” have the meanings given such  
15 terms under paragraphs (1) and (2), respec-  
16 tively, of section 733(b) of the Employee Retire-  
17 ment Income Security Act of 1974 (29 U.S.C.  
18 1191b(b)).

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

24 (3) HEALTH CARE PROFESSIONAL.—The term  
25 “health care professional” means an individual who

1 provides health care items or services, treatment, as-  
2 sistance with activities of daily living, or medications  
3 to patients and who, to the extent required by State  
4 or Federal law, possesses specialized training that  
5 confers expertise in the provision of such items or  
6 services, treatment, assistance, or medications.

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