

119TH CONGRESS
2D SESSION

S. _____

To ban anticompetitive terms in facility and insurance contracts that limit access to higher quality, lower cost care.

IN THE SENATE OF THE UNITED STATES

Mr. HUSTED introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To ban anticompetitive terms in facility and insurance contracts that limit access to higher quality, lower cost care.

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 “Healthy Competition
5 for Better Care Act”.

6 **SEC. 2. BANNING ANTICOMPETITIVE TERMS IN FACILITY**
7 **AND INSURANCE CONTRACTS THAT LIMIT AC-**
8 **CESS TO HIGHER QUALITY, LOWER COST**
9 **CARE.**

10 (a) IN GENERAL.—

1 (1) PHSA.—

2 (A) IN GENERAL.—Section 2799A–9 of the
3 Public Health Service Act (42 U.S.C. 300gg–
4 119) is amended—

5 (i) in the heading, by striking “**BY**
6 **REMOVING**” and all that follows through
7 “**INFORMATION**” and inserting “**;** **PRO-**
8 **HIBITION ON ANTICOMPETITIVE**
9 **AGREEMENTS**”;

10 (ii) in subsection (a)(5), in the first
11 sentence, by striking “section” and insert-
12 ing “subsection”; and

13 (iii) by adding at the end the fol-
14 lowing:

15 “(b) PROTECTING HEALTH PLANS NETWORK DE-
16 SIGN FLEXIBILITY.—

17 “(1) IN GENERAL.—A group health plan or a
18 health insurance issuer offering group or individual
19 health insurance coverage may not enter into an
20 agreement with a covered entity if such agreement,
21 directly or indirectly—

22 “(A) restricts (including by operation of
23 any agreement in effect between such covered
24 entity and another covered entity) the group
25 health plan or health insurance issuer from—

1 “(i) directing or steering participants
2 or beneficiaries to other health care pro-
3 viders who are not subject to such agree-
4 ment; or

5 “(ii) offering incentives to encourage
6 participants or beneficiaries to utilize spe-
7 cific health care providers;

8 “(B) requires the group health plan or
9 health insurance issuer to enter into any addi-
10 tional agreement with an affiliate of the covered
11 entity;

12 “(C) requires the group health plan or
13 health insurance issuer to agree to payment
14 rates or other terms for any affiliate of the cov-
15 ered entity not party to the agreement; or

16 “(D) restricts other group health plans or
17 health insurance issuers not party to the agree-
18 ment from paying a lower rate for items or
19 services than the plan or issuer involved in the
20 agreement pays for such items or services.

21 “(2) EXCEPTIONS FOR CERTAIN PROVIDER
22 GROUP AND VALUE-BASED NETWORK DESIGNS.—
23 Paragraph (1)(A) shall not apply to a group health
24 plan or health insurance issuer offering group or in-
25 dividual health insurance coverage with respect to—

1 “(A) a health maintenance organization, if
2 such health maintenance organization operates
3 primarily through exclusive contracts with
4 multi-specialty physician groups, nor to any ar-
5 rangement between such a health maintenance
6 organization and its affiliates; or

7 “(B) a value-based network arrangement,
8 such as an exclusive provider network, account-
9 able care organization, center of excellence, a
10 provider sponsored health insurance issuer that
11 operates primarily through aligned multi-spe-
12 cialty physician group practices or integrated
13 health systems, or such other similar network
14 arrangements as determined by the Secretary
15 through guidance or rulemaking.

16 “(3) COVERED ENTITY DEFINED.—For pur-
17 poses of this subsection, the term ‘covered entity’
18 means a health care provider, network or association
19 of providers, third-party administrator, or other
20 service provider offering access to a network of pro-
21 viders.

22 “(4) STATE GRANDFATHERING OPTION.—An
23 applicable State authority may make a determina-
24 tion that the prohibitions under paragraph (1)(A)
25 (relating to conditions that would direct or steer en-

1 rollees to, or offer incentives to encourage enrollees
2 to use, other health care providers) will not apply in
3 the State with respect to any specified agreement ex-
4 ecuted on June 19, 2019, and any agreements re-
5 lated to such specified agreement executed on or be-
6 fore December 31, 2020, for a maximum length of
7 nonapplicability of up to 10 years from the date of
8 execution of the contract if the applicable State au-
9 thority determines that the contract is unlikely to
10 significantly lessen competition. With respect to a
11 specified agreement for which an applicable State
12 authority has made a determination under the pre-
13 ceding sentence, an applicable State authority may
14 determine whether renewal of the contract, within
15 the applicable 10-year period, is allowed.

16 “(5) RULE OF CONSTRUCTION.—Except as pro-
17 vided in paragraph (1), nothing in this subsection
18 shall be construed to limit network design or cost or
19 quality initiatives by a group health plan or health
20 insurance issuer, including accountable care organi-
21 zations, exclusive provider organizations, networks
22 that tier providers by cost or quality or steer enroll-
23 ees to centers of excellence, or other pay-for-per-
24 formance programs.”.

1 (B) REGULATIONS.—Not later than 1 year
2 after the date of the enactment of this Act, the
3 Secretary of Health and Human Services, in
4 consultation with the Secretary of Labor and
5 the Secretary of the Treasury, shall promulgate
6 regulations to carry out the amendments made
7 by this paragraph.

8 (2) EMPLOYEE RETIREMENT INCOME SECURITY
9 ACT OF 1974.—

10 (A) IN GENERAL.—Section 724 of the Em-
11 ployee Retirement Income Security Act of 1974
12 (29 U.S.C. 1185m) is amended—

13 (i) in the heading, by striking “**BY**
14 **REMOVING**” and all that follows through
15 “**INFORMATION**” and inserting “**;** **PRO-**
16 **HIBITION ON ANTICOMPETITIVE**
17 **AGREEMENTS**”;

18 (ii) in subsection (a)(4), in the first
19 sentence, by striking “section” and insert-
20 ing “subsection”; and

21 (iii) by adding at the end the fol-
22 lowing:

23 “(b) PROTECTING HEALTH PLANS NETWORK DE-
24 SIGN FLEXIBILITY.—

1 “(1) IN GENERAL.—A group health plan or a
2 health insurance issuer offering group health insur-
3 ance coverage may not enter into an agreement with
4 a covered entity if such agreement, directly or indi-
5 rectly—

6 “(A) restricts (including by operation of
7 any agreement in effect between such covered
8 entity and another covered entity) the group
9 health plan or health insurance issuer from—

10 “(i) directing or steering participants
11 or beneficiaries to other health care pro-
12 viders who are not subject to such agree-
13 ment; or

14 “(ii) offering incentives to encourage
15 participants or beneficiaries to utilize spe-
16 cific health care providers;

17 “(B) requires the group health plan or
18 health insurance issuer to enter into any addi-
19 tional agreement with an affiliate of the covered
20 entity;

21 “(C) requires the group health plan or
22 health insurance issuer to agree to payment
23 rates or other terms for any affiliate of the cov-
24 ered entity not party to the agreement; or

1 “(D) restricts other group health plans or
2 health insurance issuers not party to the agree-
3 ment from paying a lower rate for items or
4 services than the plan or issuer involved in the
5 agreement pays for such items or services.

6 “(2) EXCEPTIONS FOR CERTAIN PROVIDER
7 GROUP AND VALUE-BASED NETWORK DESIGNS.—
8 Paragraph (1)(A) shall not apply to a group health
9 plan or health insurance issuer offering group health
10 insurance coverage with respect to—

11 “(A) a health maintenance organization, if
12 such health maintenance organization operates
13 primarily through exclusive contracts with
14 multi-specialty physician groups, nor to any ar-
15 rangement between such a health maintenance
16 organization and its affiliates; or

17 “(B) a value-based network arrangement,
18 such as an exclusive provider network, account-
19 able care organization, center of excellence, a
20 provider sponsored health insurance issuer that
21 operates primarily through aligned multi-spe-
22 cialty physician group practices or integrated
23 health systems, or such other similar network
24 arrangements as determined by the Secretary
25 through guidance or rulemaking.

1 “(3) COVERED ENTITY DEFINED.—For pur-
2 poses of this subsection, the term ‘covered entity’
3 means a health care provider, network or association
4 of providers, third-party administrator, or other
5 service provider offering access to a network of pro-
6 viders.

7 “(4) STATE GRANDFATHERING OPTION.—An
8 applicable State authority may make a determina-
9 tion that the prohibitions under paragraph (1)(A)
10 (relating to conditions that would direct or steer en-
11 rollees to, or offer incentives to encourage enrollees
12 to use, other health care providers) will not apply in
13 the State with respect to any specified agreement ex-
14 ecuted on June 19, 2019, and any agreements re-
15 lated to such specified agreement executed on or be-
16 fore December 31, 2020, for a maximum length of
17 nonapplicability of up to 10 years from the date of
18 execution of the contract if the applicable State au-
19 thority determines that the contract is unlikely to
20 significantly lessen competition. With respect to a
21 specified agreement for which an applicable State
22 authority has made a determination under the pre-
23 ceding sentence, an applicable State authority may
24 determine whether renewal of the contract, within
25 the applicable 10-year period, is allowed.

1 (i) in the header, by striking “**BY RE-**
2 **MOVING**” and all that follows through
3 “**INFORMATION**” and inserting “**; PRO-**
4 **HIBITION ON ANTICOMPETITIVE**
5 **AGREEMENTS**”;

6 (ii) in subsection (a)(4), in the first
7 sentence, by striking “section” and insert-
8 ing “subsection”; and

9 (iii) by adding at the end the fol-
10 lowing:

11 “(b) PROTECTING HEALTH PLANS NETWORK DE-
12 SIGN FLEXIBILITY.—

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14 not enter into an agreement with a covered entity if
15 such agreement, directly or indirectly—

16 “(A) restricts (including by operation of
17 any agreement in effect between such covered
18 entity and another covered entity) the group
19 health plan from—

20 “(i) directing or steering participants
21 or beneficiaries to other health care pro-
22 viders who are not subject to such agree-
23 ment; or

1 “(ii) offering incentives to encourage
2 participants or beneficiaries to utilize spe-
3 cific health care providers;

4 “(B) requires the group health plan to
5 enter into any additional agreement with an af-
6 filiate of the covered entity;

7 “(C) requires the group health plan to
8 agree to payment rates or other terms for any
9 affiliate of the covered entity not party to the
10 agreement; or

11 “(D) restricts other group health plans not
12 party to the agreement from paying a lower
13 rate for items or services than the plan involved
14 in the agreement pays for such items or serv-
15 ices.

16 “(2) EXCEPTIONS FOR CERTAIN PROVIDER
17 GROUP AND VALUE-BASED NETWORK DESIGNS.—
18 Paragraph (1)(A) shall not apply to a group health
19 plan with respect to—

20 “(A) a health maintenance organization, if
21 such health maintenance organization operates
22 primarily through exclusive contracts with
23 multi-specialty physician groups, nor to any ar-
24 rangement between such a health maintenance
25 organization and its affiliates; or

1 “(B) a value-based network arrangement,
2 such as an exclusive provider network, account-
3 able care organization, center of excellence, a
4 provider sponsored health insurance issuer that
5 operates primarily through aligned multi-spe-
6 cialty physician group practices or integrated
7 health systems, or such other similar network
8 arrangements as determined by the Secretary
9 through guidance or rulemaking.

10 “(3) COVERED ENTITY DEFINED.—For pur-
11 poses of this subsection, the term ‘covered entity’
12 means a health care provider, network or association
13 of providers, third-party administrator, or other
14 service provider offering access to a network of pro-
15 viders.

16 “(4) STATE GRANDFATHERING OPTION.—An
17 applicable State authority may make a determina-
18 tion that the prohibitions under paragraph (1)(A)
19 (relating to conditions that would direct or steer en-
20 rollees to, or offer incentives to encourage enrollees
21 to use, other health care providers) will not apply in
22 the State with respect to any specified agreement ex-
23 ecuted on June 19, 2019, and any agreements re-
24 lated to such specified agreement executed on or be-
25 fore December 31, 2020, for a maximum length of

1 nonapplicability of up to 10 years from the date of
2 execution of the contract if the applicable State au-
3 thority determines that the contract is unlikely to
4 significantly lessen competition. With respect to a
5 specified agreement for which an applicable State
6 authority has made a determination under the pre-
7 ceding sentence, an applicable State authority may
8 determine whether renewal of the contract, within
9 the applicable 10-year period, is allowed.

10 “(5) RULE OF CONSTRUCTION.—Except as pro-
11 vided in paragraph (1), nothing in this subsection
12 shall be construed to limit network design or cost or
13 quality initiatives by a group health plan, including
14 accountable care organizations, exclusive provider or-
15 ganizations, networks that tier providers by cost or
16 quality or steer enrollees to centers of excellence, or
17 other pay-for-performance programs.”

18 (B) CLERICAL AMENDMENT.—The table of
19 contents in section 1 of such Act is amended,
20 in the entry relating to section 9824, by amend-
21 ing such entry to read as follows:

“Sec. 9824. Increasing transparency; prohibition on anticompetitive agree-
ments.”.

22 (C) REGULATIONS.—Not later than 1 year
23 after the date of the enactment of this Act, the
24 Secretary of the Treasury, in consultation with

1 the Secretary of Health and Human Services
2 and the Secretary of Labor, shall promulgate
3 regulations to carry out the amendments made
4 by this paragraph.

5 (b) **EFFECTIVE DATE.**—The amendments made by
6 subsection (a) shall apply with respect to any contract en-
7 tered into, amended, or renewed on or after the date that
8 is 18 months after the date of enactment of this Act.