

117TH CONGRESS  
1ST SESSION

# S. 3139

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

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 2021

Mr. BRAUN (for himself and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## 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.—Section 2799A–9 of the Public  
2 Health Service Act (42 U.S.C. 300gg–119) is  
3 amended by adding at the end the following:

4           “(b) PROTECTING HEALTH PLANS NETWORK DE-  
5 SIGN FLEXIBILITY.—

6           “(1) IN GENERAL.—A group health plan or a  
7 health insurance issuer offering group or individual  
8 health insurance coverage shall not enter into an  
9 agreement with a provider, network or association of  
10 providers, or other service provider offering access to  
11 a network of service providers if such agreement, di-  
12 rectly or indirectly—

13           “(A) restricts the group health plan or  
14 health insurance issuer from—

15           “(i) directing or steering enrollees to  
16 other health care providers; or

17           “(ii) offering incentives to encourage  
18 enrollees to utilize specific health care pro-  
19 viders;

20           “(B) requires the group health plan or  
21 health insurance issuer to enter into any addi-  
22 tional contract with an affiliate of the provider  
23 as a condition of entering into a contract with  
24 such provider;

1           “(C) requires the group health plan or  
2 health insurance issuer to agree to payment  
3 rates or other terms for any affiliate not party  
4 to the contract of the provider involved; or

5           “(D) restricts other group health plans or  
6 health insurance issuers not party to the con-  
7 tract, from paying a lower rate for items or  
8 services than the contracting plan or issuer  
9 pays for such items or services.

10           “(2) ADDITIONAL REQUIREMENT FOR SELF-IN-  
11 SURED PLANS.—A self-insured group health plan  
12 shall not enter into an agreement with a provider,  
13 network or association of providers, third-party ad-  
14 ministrator, or other service provider offering access  
15 to a network of providers if such agreement directly  
16 or indirectly requires the group health plan to cer-  
17 tify, attest, or otherwise confirm in writing that the  
18 group health plan is bound by restrictive contracting  
19 terms between the service provider and a third-party  
20 administrator that the group health plan is not  
21 party to, without a disclosure that such terms exist.

22           “(3) EXCEPTION FOR CERTAIN GROUP MODEL  
23 ISSUERS.—Paragraph (1)(A) shall not apply to a  
24 group health plan or health insurance issuer offering

1 group or individual health insurance coverage with  
2 respect to—

3 “(A) a health maintenance organization  
4 (as defined in section 2791(b)(3)), if such  
5 health maintenance organization operates pri-  
6 marily through exclusive contracts with multi-  
7 specialty physician groups, nor to any arrange-  
8 ment between such a health maintenance orga-  
9 nization and its affiliates; or

10 “(B) a value-based network arrangement,  
11 such as an exclusive provider network, account-  
12 able care organization or other alternative pay-  
13 ment model, center of excellence, a provider  
14 sponsored health insurance issuer that operates  
15 primarily through aligned multi-specialty physi-  
16 cian group practices or integrated health sys-  
17 tems, or such other similar network arrange-  
18 ments as determined by the Secretary through  
19 rulemaking.

20 “(4) ATTESTATION.—A group health plan or  
21 health insurance issuer offering group or individual  
22 health insurance coverage shall annually submit to,  
23 as applicable, the applicable authority described in  
24 section 2723 or the Secretary of Labor, an attesta-

1           tion that such plan or issuer is in compliance with  
2           the requirements of this subsection.

3           “(c) MAINTENANCE OF EXISTING HIPAA, GINA,  
4 AND ADA PROTECTIONS.—Nothing in this section shall  
5 modify, reduce, or eliminate the existing privacy protec-  
6 tions and standards provided by reason of State and Fed-  
7 eral law, including the requirements of parts 160 and 164  
8 of title 45, Code of Federal Regulations (or any successor  
9 regulations).

10          “(d) REGULATIONS.—The Secretary, in consultation  
11 with the Secretary of Labor and the Secretary of the  
12 Treasury, not later than 1 year after the date of enact-  
13 ment of this section, shall promulgate regulations to carry  
14 out this section.

15          “(e) RULE OF CONSTRUCTION.—Nothing in this sec-  
16 tion shall be construed to limit network design or cost or  
17 quality initiatives by a group health plan or health insur-  
18 ance issuer, including accountable care organizations, ex-  
19 clusive provider organizations, networks that tier providers  
20 by cost or quality or steer enrollees to centers of excel-  
21 lence, or other pay-for-performance programs.

22          “(f) CLARIFICATION WITH RESPECT TO ANTITRUST  
23 LAWS.—Compliance with this section does not constitute  
24 compliance with the antitrust laws, as defined in sub-

1 section (a) of the first section of the Clayton Act (15  
2 U.S.C. 12(a)).”.

3 (2) ERISA.—Section 724 of the Employee Re-  
4 tirement Income Security Act of 1974 (29 U.S.C.  
5 1185m) is amended by adding at the end the fol-  
6 lowing:

7 “(b) PROTECTING HEALTH PLANS NETWORK DE-  
8 SIGN FLEXIBILITY.—

9 “(1) IN GENERAL.—A group health plan or a  
10 health insurance issuer offering group health insur-  
11 ance coverage shall not enter into an agreement with  
12 a provider, network or association of providers, or  
13 other service provider offering access to a network of  
14 service providers if such agreement, directly or indi-  
15 rectly—

16 “(A) restricts the group health plan or  
17 health insurance issuer from—

18 “(i) directing or steering enrollees to  
19 other health care providers; or

20 “(ii) offering incentives to encourage  
21 enrollees to utilize specific health care pro-  
22 viders;

23 “(B) requires the group health plan or  
24 health insurance issuer to enter into any addi-  
25 tional contract with an affiliate of the provider

1 as a condition of entering into a contract with  
2 such provider;

3 “(C) requires the group health plan or  
4 health insurance issuer to agree to payment  
5 rates or other terms for any affiliate not party  
6 to the contract of the provider involved; or

7 “(D) restricts other group health plans or  
8 health insurance issuers not party to the con-  
9 tract, from paying a lower rate for items or  
10 services than the contracting plan or issuer  
11 pays for such items or services.

12 “(2) ADDITIONAL REQUIREMENT FOR SELF-IN-  
13 SURED PLANS.—A self-insured group health plan  
14 shall not enter into an agreement with a provider,  
15 network or association of providers, third-party ad-  
16 ministrator, or other service provider offering access  
17 to a network of providers if such agreement directly  
18 or indirectly requires the group health plan to cer-  
19 tify, attest, or otherwise confirm in writing that the  
20 group health plan is bound by restrictive contracting  
21 terms between the service provider and a third-party  
22 administrator that the group health plan is not  
23 party to, without a disclosure that such terms exist.

24 “(3) EXCEPTION FOR CERTAIN GROUP MODEL  
25 ISSUERS.—Paragraph (1)(A) shall not apply to a

1 group health plan or health insurance issuer offering  
2 group health insurance coverage with respect to—

3 “(A) a health maintenance organization  
4 (as defined in section 733(b)(3)), if such health  
5 maintenance organization operates primarily  
6 through exclusive contracts with multi-specialty  
7 physician groups, nor to any arrangement be-  
8 tween such a health maintenance organization  
9 and its affiliates; or

10 “(B) a value-based network arrangement,  
11 such as an exclusive provider network, account-  
12 able care organization or other alternative pay-  
13 ment model, center of excellence, a provider  
14 sponsored health insurance issuer that operates  
15 primarily through aligned multi-specialty physi-  
16 cian group practices or integrated health sys-  
17 tems, or such other similar network arrange-  
18 ments as determined by the Secretary through  
19 rulemaking.

20 “(4) ATTESTATION.—A group health plan or  
21 health insurance issuer offering group health insur-  
22 ance coverage shall annually submit to the Secretary  
23 of Labor an attestation that such plan or issuer is  
24 in compliance with the requirements of this sub-  
25 section.



1       “(c) MAINTENANCE OF EXISTING HIPAA, GINA,  
2 AND ADA PROTECTIONS.—Nothing in this section shall  
3 modify, reduce, or eliminate the existing privacy protec-  
4 tions and standards provided by reason of State and Fed-  
5 eral law, including the requirements of parts 160 and 164  
6 of title 45, Code of Federal Regulations (or any successor  
7 regulations).

8       “(d) REGULATIONS.—The Secretary, in consultation  
9 with the Secretary of Health and Human Services and the  
10 Secretary of the Treasury, not later than 1 year after the  
11 date of enactment of this section, shall promulgate regula-  
12 tions to carry out this section.

13       “(e) RULE OF CONSTRUCTION.—Nothing in this sec-  
14 tion shall be construed to limit network design or cost or  
15 quality initiatives by a group health plan or health insur-  
16 ance issuer, including accountable care organizations, ex-  
17 clusive provider organizations, networks that tier providers  
18 by cost or quality or steer enrollees to centers of excel-  
19 lence, or other pay-for-performance programs.

20       “(f) CLARIFICATION WITH RESPECT TO ANTITRUST  
21 LAWS.—Compliance with this section does not constitute  
22 compliance with the antitrust laws, as defined in sub-  
23 section (a) of the first section of the Clayton Act (15  
24 U.S.C. 12(a)).”.

1           (3) IRC.—Section 9824 of the Internal Rev-  
2           enue Code of 1986 is amended by adding at the end  
3           the following:

4           “(b) PROTECTING HEALTH PLANS NETWORK DE-  
5           SIGN FLEXIBILITY.—

6           “(1) IN GENERAL.—A group health plan shall  
7           not enter into an agreement with a provider, net-  
8           work or association of providers, or other service  
9           provider offering access to a network of service pro-  
10          viders if such agreement, directly or indirectly—

11                  “(A) restricts the group health plan  
12                  from—

13                          “(i) directing or steering enrollees to  
14                          other health care providers; or

15                          “(ii) offering incentives to encourage  
16                          enrollees to utilize specific health care pro-  
17                          viders;

18                  “(B) requires the group health plan to  
19                  enter into any additional contract with an affil-  
20                  iate of the provider as a condition of entering  
21                  into a contract with such provider;

22                  “(C) requires the group health plan to  
23                  agree to payment rates or other terms for any  
24                  affiliate not party to the contract of the pro-  
25                  vider involved; or

1           “(D) restricts other group health plans not  
2           party to the contract, from paying a lower rate  
3           for items or services than the contracting plan  
4           pays for such items or services.

5           “(2) ADDITIONAL REQUIREMENT FOR SELF-IN-  
6           SURED PLANS.—A self-insured group health plan  
7           shall not enter into an agreement with a provider,  
8           network or association of providers, third-party ad-  
9           ministrator, or other service provider offering access  
10          to a network of providers if such agreement directly  
11          or indirectly requires the group health plan to cer-  
12          tify, attest, or otherwise confirm in writing that the  
13          group health plan is bound by restrictive contracting  
14          terms between the service provider and a third-party  
15          administrator that the group health plan is not  
16          party to, without a disclosure that such terms exist.

17          “(3) EXCEPTION FOR CERTAIN GROUP MODEL  
18          ISSUERS.—Paragraph (1)(A) shall not apply to a  
19          group health plan with respect to—

20                 “(A) a health maintenance organization  
21                 (as defined in section 9832(b)(3)), if such  
22                 health maintenance organization operates pri-  
23                 marily through exclusive contracts with multi-  
24                 specialty physician groups, nor to any arrange-

1           ment between such a health maintenance orga-  
2           nization and its affiliates; or

3           “(B) a value-based network arrangement,  
4           such as an exclusive provider network, account-  
5           able care organization or other alternative pay-  
6           ment model, center of excellence, a provider  
7           sponsored health insurance issuer that operates  
8           primarily through aligned multi-specialty physi-  
9           cian group practices or integrated health sys-  
10          tems, or such other similar network arrange-  
11          ments as determined by the Secretary through  
12          rulemaking.

13          “(4) ATTESTATION.—A group health plan shall  
14          annually submit to the Secretary of Labor an attes-  
15          tation that such plan is in compliance with the re-  
16          quirements of this subsection.

17          “(c) MAINTENANCE OF EXISTING HIPAA, GINA,  
18          AND ADA PROTECTIONS.—Nothing in this section shall  
19          modify, reduce, or eliminate the existing privacy protec-  
20          tions and standards provided by reason of State and Fed-  
21          eral law, including the requirements of parts 160 and 164  
22          of title 45, Code of Federal Regulations (or any successor  
23          regulations).

24          “(d) REGULATIONS.—The Secretary, in consultation  
25          with the Secretary of Health and Human Services and the

1 Secretary of Labor, not later than 1 year after the date  
2 of enactment of this section, shall promulgate regulations  
3 to carry out this section.

4 “(e) RULE OF CONSTRUCTION.—Nothing in this sec-  
5 tion shall be construed to limit network design or cost or  
6 quality initiatives by a group health plan, including ac-  
7 countable care organizations, exclusive provider organiza-  
8 tions, networks that tier providers by cost or quality or  
9 steer enrollees to centers of excellence, or other pay-for-  
10 performance programs.

11 “(f) CLARIFICATION WITH RESPECT TO ANTITRUST  
12 LAWS.—Compliance with this section does not constitute  
13 compliance with the antitrust laws, as defined in sub-  
14 section (a) of the first section of the Clayton Act (15  
15 U.S.C. 12(a)).”.

16 (b) EFFECTIVE DATE.—The amendments made by  
17 subsection (a) shall apply with respect to any contract en-  
18 tered into on or after the date that is 18 months after  
19 the date of enactment of this Act. With respect to an ap-  
20 plicable contract that is in effect on the date of enactment  
21 of this Act, such amendments shall apply on the earlier  
22 of the date of renewal of such contract or 3 years after  
23 such date of enactment.

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