

103^D CONGRESS
1ST SESSION

H. R. 73

To require the Secretary of Health and Human Services and the Attorney General to jointly carry out a demonstration program to reduce health care costs through the sharing by medical facilities of certain services and equipment, notwithstanding any antitrust law to the contrary, and to direct the Attorney General to carry out a certificate of review process exempting eligible medical facilities from the application of certain anti-trust laws.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. HOAGLAND introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and the Judiciary

MAY 11, 1993

Additional sponsor: Mr. DOOLEY

A BILL

To require the Secretary of Health and Human Services and the Attorney General to jointly carry out a demonstration program to reduce health care costs through the sharing by medical facilities of certain services and equipment, notwithstanding any antitrust law to the contrary, and to direct the Attorney General to carry out a certificate of review process exempting eligible medical facilities from the application of certain antitrust laws.

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 “Health Services Cost
3 Control Act”.

4 **SEC. 2. PURPOSE.**

5 It is the purpose of this Act to reduce health care
6 costs by encouraging cooperation between hospitals and
7 other medical facilities in order to contain costs and
8 achieve a more efficient and effective health care delivery
9 system through the elimination of unnecessary duplication
10 of expensive medical or high technology services or equip-
11 ment while preserving services in geographical proximity
12 to the communities traditionally served by the facilities.

13 **SEC. 3. TECHNOLOGY AND SERVICES SHARING DEM-**
14 **ONSTRATION PROGRAM.**

15 Part D of title VI of the Public Health Service Act
16 (42 U.S.C. 291k et seq.) is amended by adding at the end
17 thereof the following new section:

18 **“SEC. 647. TECHNOLOGY AND SERVICES SHARING DEM-**
19 **ONSTRATION PROGRAM.**

20 “(a) ESTABLISHMENT.—

21 “(1) IN GENERAL.—The Secretary and the At-
22 torney General (in this section jointly referred to as
23 the ‘Administrators’) shall jointly carry out a dem-
24 onstration program under which twenty three-year
25 grants are awarded for fiscal year 1994 to eligible
26 applicants to facilitate collaboration among two or

1 more licensed hospitals or other medical facilities
2 with respect to the provision of expensive, capital-in-
3 tensive medical technology or other highly resource-
4 intensive services. Such program shall be designed to
5 demonstrate the extent to which such agreements re-
6 sult in a reduction in costs to the facilities and indi-
7 viduals involved, in an increase in access to care for
8 individuals, and in improvements in the quality of
9 care.

10 “(2) SERVICE AREA.—The Administrators shall
11 determine the region to be served by a demonstra-
12 tion program under paragraph (1). In carrying out
13 this section, the Administrators shall ensure that the
14 operation of such a program preserves the availabil-
15 ity of health services in geographical proximity to
16 the communities traditionally served by the facilities
17 participating in the program.

18 “(b) ELIGIBLE APPLICANTS.—

19 “(1) IN GENERAL.—To be eligible to receive a
20 grant under subsection (a), a medical facility or fa-
21 cilities shall prepare and submit to the Administra-
22 tors an application at such time, in such manner,
23 and containing such information as the Administra-
24 tors may require, including—

1 “(A) a statement that such entity desires
2 to negotiate and enter into a voluntary agree-
3 ment under which such entity is operating in
4 one State or region for the sharing of medical
5 technology or services;

6 “(B) a description of the nature and scope
7 of the activities contemplated under the cooper-
8 ative agreement;

9 “(C) a description of the financial arrange-
10 ment between the entities that are parties to
11 the agreement;

12 “(D) a description of the geographical area
13 generally served by the entities;

14 “(E) a description of anticipated benefits
15 and advantages to the providers and to individ-
16 uals; and

17 “(F) any other information determined ap-
18 propriate by the Administrators.

19 “(2) DEVELOPMENT OF EVALUATION GUIDE-
20 LINES.—Not later than 90 days after the date of en-
21 actment of this section, the Administrators shall de-
22 velop regulations, including criteria and evaluation
23 guidelines with respect to applications submitted
24 under paragraph (1).

1 “(3) EVALUATIONS OF APPLICATIONS.—The
2 Administrators shall evaluate applications submitted
3 under paragraph (1). In determining which applica-
4 tions to approve for purposes of awarding grants
5 under subsection (a), the Administrators shall con-
6 sider whether the agreement described in each such
7 application meets the criteria and guidelines devel-
8 oped under paragraph (2) and is likely to result in—

9 “(A) the enhancement of the quality of
10 care;

11 “(B) the preservation of services in geo-
12 graphical proximity to the communities tradi-
13 tionally served by the applicant;

14 “(C) improvements in the cost-effectiveness
15 of high-technology services by the entities in-
16 volved;

17 “(D) improvements in the efficient utiliza-
18 tion of the entities’ resources and capital equip-
19 ment;

20 “(E) the provision of services that would
21 not otherwise be available;

22 “(F) the elimination of unnecessary dupli-
23 cation of hospital resources;

24 “(G) a reduction in costs to individuals; or

1 “(H) no undue harm to the care provided
2 individuals seeking services.

3 “(c) ALLOCATION OF GRANT FUNDS.—

4 “(1) IN GENERAL.—Amounts provided under a
5 grant awarded under subsection (a) shall be used to
6 facilitate collaboration among entities. Such permis-
7 sible uses may include reimbursements for the ex-
8 penses associated with specialized personnel, admin-
9 istrative services, support services, transportation,
10 and instructional programs. Funds may not be used
11 to purchase expensive, capital-intensive medical tech-
12 nology or other highly resource-intensive services not
13 previously owned or provided by the facility.

14 “(2) GRANT AWARD AMOUNT.—Entities apply-
15 ing for grants under subsection (a) shall specify the
16 desired grant award amount. The Administrators
17 shall determine the appropriate amount in granting
18 such awards.

19 “(3) GEOGRAPHIC AND SIZE DIVERSITY.—In
20 awarding grants under this section, the Administra-
21 tors shall assure that, to the extent reasonably prac-
22 ticable, there is a sufficiently representative geo-
23 graphic and size distribution of grantees.

24 “(d) MEDICAL TECHNOLOGY AND SERVICES.—

1 “(1) IN GENERAL.—Agreements carried out
2 under this section shall provide for the sharing of
3 medical technology or eligible services among the en-
4 tities which are parties to such agreements.

5 “(2) MEDICAL TECHNOLOGY.—For purposes of
6 this section, the term ‘medical technology’ includes
7 the drugs, devices, equipment and medical and sur-
8 gical procedures utilized in medical care, and the or-
9 ganizational and support systems within which such
10 care is provided, that—

11 “(A) have high capital costs or extremely
12 high annual operating costs; and

13 “(B) are technologies with respect to which
14 there is a reasonable expectation that shared
15 ownership will avoid a significant degree of the
16 potential excess capacity of such service in the
17 community or region to be served under such
18 agreement.

19 “(3) ELIGIBLE SERVICES.—With respect to
20 services that may be shared under an agreement en-
21 tered into under this section, such services shall—

22 “(A) either have high capital costs or ex-
23 tremely high annual operating costs; and

24 “(B) be services with respect to which
25 there is a reasonable expectation that shared

1 ownership will avoid a significant degree of the
2 potential excess capacity of such services in the
3 community or region to be served under such
4 agreement.

5 Such services may include mobile services.

6 “(e) TERM.—The demonstration program established
7 under this section shall continue for 3 calendar years.

8 “(f) REPORTS.—

9 “(1) IN GENERAL.—Grantees shall submit an-
10 nual reports to the Administrators containing infor-
11 mation on the demonstration projects funded under
12 this section, as required by the Administrators.

13 “(2) TO CONGRESS.—On the date that occurs
14 42 months after the establishment of the demonstra-
15 tion program under this section, the Administrators
16 shall prepare and submit to the appropriate commit-
17 tees of Congress, a report concerning results of the
18 demonstration and the potential for cooperative
19 agreements of the type entered into under this sec-
20 tion to—

21 “(A) contain health care costs;

22 “(B) increase the access of individuals to
23 medical services; and

24 “(C) improve the quality of health care.

1 Such report shall also contain the recommendations
2 of the Administrators with respect to future pro-
3 grams to facilitate cooperative agreements and rec-
4 ommendations for legislation.

5 “(g) RELATION TO ANTITRUST LAWS.—

6 “(1) IN GENERAL.—Notwithstanding any provi-
7 sion of the antitrust laws, it shall not be considered
8 a violation of the antitrust laws for an entity that
9 receives a grant under subsection (a) to enter into
10 and carry out activities under a cooperative agree-
11 ment in accordance with this section.

12 “(2) DEFINITION.—For purposes of this sub-
13 section, the term ‘antitrust laws’ means—

14 “(A) the Act entitled “An Act to protect
15 trade and commerce against unlawful restraints
16 and monopolies”, approved July 2, 1890, com-
17 monly known as the “Sherman Act” (26 Stat.
18 209; chapter 647; 15 U.S.C. 1 et seq.);

19 “(B) the Federal Trade Commission Act,
20 approved September 26, 1914 (38 Stat. 717;
21 chapter 311; 15 U.S.C. 41 et seq.);

22 “(C) the Act entitled “An Act to supple-
23 ment existing laws against unlawful restraints
24 and monopolies, and for other purposes”, ap-
25 proved October 15, 1914, commonly known as

1 the “Clayton Act” (38 Stat. 730; chapter 323;
2 15 U.S.C. 12 et seq.; 18 U.S.C. 402, 660,
3 3285, 3691; 29 U.S.C. 52, 53); and

4 “(D) any State antitrust laws that would
5 prohibit the activities described in paragraph
6 (1).

7 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated to carry out this section,
9 \$2,500,000 for each of the fiscal years 1994 through
10 1996. Any appropriation pursuant to the preceding sen-
11 tence shall be subject to section 601 of the Congressional
12 Budget Act of 1974 (relating to discretionary spending
13 limits).”.

14 **SEC. 4. CERTIFICATE OF REVIEW PROCESS.**

15 (a) ISSUANCE OF CERTIFICATE OF REVIEW.—

16 (1) IN GENERAL.—The Attorney General may
17 issue a certificate of review with a three-year term
18 to licensed hospitals and other medical facilities that
19 enter into cooperative agreements with respect to the
20 provision of expensive, capital-intensive medical tech-
21 nology or other highly resource-intensive services if
22 such agreements—

23 (A) are designed to result in a reduction in
24 unnecessary duplication of services, in a reduc-
25 tion in costs to individuals, in an increase in ac-

1 cess to care for individuals, or in improvements
2 in the quality of care;

3 (B) will not unreasonably enhance, sta-
4 bilize, or depress prices within the United
5 States for the equipment or services of the class
6 under the agreement; and

7 (C) will not constitute unfair methods of
8 competition against competitors engaged in pro-
9 viding the services of the class under the agree-
10 ment.

11 (2) DEADLINE FOR RESPONSE TO APPLICA-
12 TION.—The Attorney General shall respond to a re-
13 quest for a certificate of review under paragraph (1)
14 not later than 90 days after receiving the request.

15 (b) PROTECTION CONFERRED BY CERTIFICATE OF
16 REVIEW.—

17 (1) PROTECTION FROM CIVIL OR CRIMINAL
18 ANTITRUST ACTIONS.—Except as provided in para-
19 graph (2), no criminal or civil action may be brought
20 under the antitrust laws against a hospital or other
21 medical facility to which a certificate of review under
22 subsection (a) is issued which is based on conduct
23 which is specified in, and compliance with the terms
24 of, such certificate of review which certificate was in
25 effect when the conduct occurred.

1 (2) CIVIL ACTIONS.—

2 (A) Any person who has been injured as a
3 result of conduct engaged in under a certificate
4 of review under subsection (a) may bring a civil
5 action for injunctive relief, actual damages, the
6 loss of interest on actual damages, and the cost
7 of suit (including a reasonable attorney's fee)
8 for the failure to comply with the standards of
9 such subsection. Any action commenced under
10 this subsection shall proceed as if it were an ac-
11 tion commenced under section 4 or section 16
12 of the Clayton Act, except that the standards of
13 subsection (a) and the remedies provided in this
14 paragraph shall be the exclusive standards and
15 remedies applicable to such action.

16 (B) Any action brought under subpara-
17 graph (A) shall be filed within two years of the
18 date the plaintiff has notice of the failure to
19 comply with the standards of subsection (a) but
20 in any event within 4 years after the cause of
21 action accrues.

22 (C) In any action brought under subpara-
23 graph (A), there shall be a presumption that
24 conduct which is specified in and complies with

1 a certificate of review does comply with the
2 standards of subsection (a).

3 (D) In any action brought under subpara-
4 graph (A), if the court finds that the conduct
5 does comply with the standards of subsection
6 (a), the court shall award to the hospital or
7 other medical facility against which the claim is
8 brought the cost of suit attributable to defend-
9 ing against the claim (including a reasonable
10 attorney's fee).

11 (E) The Attorney General may file a suit
12 pursuant to section 15 of the Clayton Act (15
13 U.S.C. 25) to enjoin conduct threatening clear
14 and irreparable harm to the national interest.

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