

To complement the enhanced negotiating power they have accrued through mergers and acquisitions, managed care organizations also use exclusionary contracting practices to bully health care professionals into accepting terms they surely would not accept if they were able to negotiate on a level playing field. These trends have enabled insurers to employ a "take it or leave it" approach when negotiating with health care professionals. As a result, the doctor-patient relationship has been compromised and the quality of care for all patients has suffered.

I have heard many first hand accounts of these abusive practices from the New Jersey Medical Society, the New Jersey Pharmacists Association, and countless other physicians with whom I have met over the last several years. We must put an end to them.

The Quality Health Care Coalition Act would correct this problem by giving health professionals the tools they need to band together when negotiating with managed care organizations. This enhanced negotiating power will level the playing field and allow health professionals to stand up for what's right and make medical judgments based on patients' medical needs rather than the managed care industry's financial motivations.

Vote "yes" on final passage.

Mr. PAUL. Mr. Chairman, I am pleased to take this opportunity to lend my support to H.R. 1304, the Quality Health Care Coalition Act, which takes a first step towards restoring a true free-market in health care by restoring the rights of freedom of contract and association to health care professionals. Over the past few years, we have had much debate in Congress about the difficulties medical professionals and patients are having with Health Maintenance Organizations (HMOs). HMOs are devices used by insurance industries to ration health care. While it is politically popular for members of Congress to bash the HMOs and the insurance industry, the growth of the HMOs are rooted in past government interventions in the health care market though the tax code, the Employment Retirement Security Act (ERSIA), and the federal anti-trust laws. These interventions took control of the health care dollar away from individual patients and providers, thus making it inevitable that something like the HMOs would emerge as a means to control costs.

Many of my well-meaning colleagues would deal with the problems created by the HMOs by expanding the federal government's control over the health care market. These interventions will inevitably drive up the cost of health care and further erode the ability of patients and providers to determine the best health treatments free of government and third-party interference. In contrast, the Quality Health Care Coalition Act addresses the problems associated with HMOs by restoring medical professionals' freedom to form voluntary organizations for the purpose of negotiating contracts with an HMO or an insurance company.

As an OB-GYN with over 30 years in practice, I am well aware of how young physicians coming out of medical school feel compelled to sign contracts with HMOs that may contain clauses that compromise their professional integrity. For example, many physicians are contractually forbidden from discussing all available treatment options with their patients because the HMO gatekeeper has deemed certain treatment options too expensive. In my

own practice, I have tried hard not to sign contracts with any health insurance company that infringed on my ability to practice medicine in the best interests of my patients and I have always counseled my professional colleagues to do the same. Unfortunately, because of the dominance of the HMO in today's health care market, many health care professionals cannot sustain a medical practice unless they agree to conform their practice to the dictates of some HMO.

One way health care professionals could counter the power of the HMOs would be to form a voluntary association for the purpose of negotiating with an HMO or an insurance company. However, health care professionals who attempt to form such a group run the risk of persecution under federal anti-trust laws. This not only reduces the ability of health care professionals to negotiate with HMOs on a level playing field, it, like existing antitrust laws, are an unconstitutional violation of medical professionals' freedom of contract and association.

Under the United States Constitution, the federal government has no authority to interfere with the private contracts of American citizens. Furthermore, the prohibitions on contracting contained in the Sherman antitrust laws are based on a flawed economic theory: that federal regulators can improve upon market outcomes by restricting the rights of certain market participants deemed too powerful by the government. In fact, anti-trust laws harm consumers by preventing the operation of the free-market, causing prices to rise, quality to suffer, and, as is certainly the case with the relationship between the HMOs and medical professionals, favoring certain industries over others. In fact, Mr. Speaker, I would hope that my colleagues would see the folly of anti-trust laws and support my Market Process Restoration Act (H.R. 1789), which repeals all federal antitrust laws.

By restoring the freedom of medical professionals to voluntarily come together to negotiate as a group with HMOs and insurance companies, this bill removes a government-imposed barrier to a true free market in health care. I am quite pleased that this bill does not infringe on the rights of health care professionals by forcing them to join a bargaining organization against their will. Contrary to the claims of some of its opponents, H.R. 1304 in no way extends the scourge of federally-mandated compulsory unionism to the health care professions. While Congress should protect the right of all Americans to join organizations for the purpose of bargaining collectively, Congress also has a moral responsibility to ensure that no worker is forced by law to join or financially support such an organization.

Mr. Chairman, it is my hope that Congress will follow up on its action today by empowering patients to control their health care by providing all Americans with access to Medical Saving Accounts (MSAs) and large tax credits for their health care expenses. Putting individuals back in charge of their own health care decisions will enable patients to work with providers to ensure they receive the best possible health care at the lowest possible price. If providers and patients have the ability to form the contractual arrangements that they found most beneficial to them, the HMO monster would wither on the vine without the imposition of new federal regulations on the insurance industry.

In conclusion, Mr. Chairman, I urge my colleagues to support the Quality Health Care

Coalition Act and restore the freedom of contract and association to American's health care professionals. Antitrust laws are no more legitimate or constitutional in the health care market than they are on the software market. Therefore, I hope my colleagues will not just pass this bill but will also support my Market Process Restoration Act and exempt all Americans from antitrust laws. I also urge my colleagues to join me in working to promote a true free-market in health care by putting patients back in charge of the health care dollar through means such as Medical Savings Accounts (MSAs) and individual health care tax credits.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill shall be considered as the original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 1304

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Quality Health-Care Coalition Act of 2000".

SEC. 2. APPLICATION OF THE ANTITRUST LAWS TO HEALTH CARE PROFESSIONALS NEGOTIATING WITH HEALTH PLANS.

(a) **IN GENERAL.**—Any health care professionals who are engaged in negotiations with a health plan regarding the terms of any contract under which the professionals provide health care items or services for which benefits are provided under such plan shall, in connection with such negotiations, be entitled to the same treatment under the antitrust laws as the treatment to which bargaining units which are recognized under the National Labor Relations Act are entitled in connection with such collective bargaining. Such a professional shall, only in connection with such negotiations, be treated as an employee engaged in concerted activities and shall not be regarded as having the status of an employer, independent contractor, managerial employee, or supervisor.

(b) **PROTECTION FOR GOOD FAITH ACTIONS.**—Actions taken in good faith reliance on subsection (a) shall not be the subject under the antitrust laws of criminal sanctions nor of any civil damages, fees, or penalties beyond actual damages incurred.

(c) **LIMITATION.**—

(1) **NO NEW RIGHT FOR COLLECTIVE CESSATION OF SERVICE.**—The exemption provided in subsection (a) shall not confer any new right to participate in any collective cessation of service to patients not already permitted by existing law.

(2) **NO CHANGE IN NATIONAL LABOR RELATIONS ACT.**—This section applies only to health care professionals excluded from the National Labor Relations Act. Nothing in this section shall be construed as changing or amending any provision of the National Labor Relations Act, or as affecting the status of any group of persons under that Act.

(d) **3-YEAR SUNSET.**—The exemption provided in subsection (a) shall only apply to conduct occurring during the 3-year period beginning on the date of the enactment of this Act and shall continue to apply for 1 year after the end of such period to contracts entered into before the end of such period.

(e) **LIMITATION ON EXEMPTION.**—Nothing in this section shall exempt from the application of the antitrust laws any agreement or otherwise