



## **H.R. 1204 Will Harm Employers**

Despite aggressive efforts by payers and their pharmacy benefit manager (PBM) partners to control the drug spend over the last several years, prescription drug spending continues to rise. And now, adding a further burden to these efforts, the independent community pharmacists are seeking to carve themselves out of the antitrust laws. If they are successful, such an exemption will only further accelerate drug costs, drug spending and the economic burden consumers now shoulder in the health care marketplace. H.R. 1204 is not intended to lower costs, instead it would entirely exempt non-publicly traded retail pharmacies from federal antitrust laws. Such a policy would inevitably lead to higher prices for drug plan sponsors, less access to pharmacy providers, less ability for plan sponsors to employ management tools (prior authorization, step therapy, encouraging mail order, etc.), and reduced drug benefits for consumers.

In 2007, prescription drug benefit costs rose 9.3% among large employers with 500 or more employees. This was almost twice the 5.1% rate that medical costs rose.<sup>1</sup> Moreover, according to a recent Mercer survey<sup>2</sup>, employers had already implemented increased cost sharing and tiered co-payment structures to tame pharmacy drug spend. At a time when employers and other payers are struggling to keep costs affordable while maintaining broad access to prescription drugs, we simply cannot afford this legislation.

### **Special antitrust exemptions are expensive to employers and consumers**

- Price fixing never results in lower costs to consumers.
- A recent study by Charles River Associates analyzing the legislation found that it would increase drug costs by \$29.6 billion over five years, or 11.8%. Approximately three quarters of this cost would be borne by the commercial market.
- The Congressional Budget Office scored the legislation as costing \$640 million to the Federal government over 10 years. However, CBO only considered the Federal government's share of the market. Remember:
  - The Federal government only pays a portion of the Part D benefit (roughly 50%)
  - The Federal government pays even less of the Medicare retiree market (28%)
  - CBO's analysis did not consider any other, anticompetitive effects of the legislation that also will raise costs (boycotts, etc.)

Carving independent pharmacies out of the antitrust laws will legitimize behavior that is today per se illegal and will inevitably increase health care costs. These costs will be borne by Medicare, health insurers, employers, plan sponsors and patients. As costs increase, patients fill fewer prescriptions and payers scale back, reduce or even eliminate health care coverage. Moreover, granting this unprecedented exemption will invite if not incite other health care providers (physicians, hospitals, etc.) to seek similar special interest status.

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<sup>1</sup> Mercer's 2007 Hot Topics in Health Care Pharmacy Benefits

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