



H.R. 1204 Will Harm Consumers

H.R. 1204 creates an exemption to 100-year old federal and state antitrust laws for certain independent pharmacies. The legislation would allow pharmacies to engage in collusion, boycotts, and price fixing all in the name of extracting higher prices without a promise of increased consumer or economic quality.

Erodes Established Consumer Protections

- Antitrust laws are designed to prevent anti-competitive conduct in the private sector that could cause harm to consumers. As clearly stated in the landmark case *Brown Shoe Co v. United States*, "Antitrust laws were enacted for the protection of competition, not competitors."
- Throughout history, exemptions to antitrust laws have been granted in rare instances in which benefits to the U.S. economy and consumers far exceed the need for freely competitive market. For example, labor unions were given an antitrust exemption to encourage collective bargaining and improve the working conditions of workers.
- According to the Federal Trade Commission, past antitrust challenges by health care professionals have resulted in fee increases of 20 percent or more, have threatened the availability of services to low-income patients, and have led to boycotts of government-sponsored employee health plans.ⁱ
- **Consumers Union**, the independent, non-profit publisher of *Consumer Reports*, is particularly concerned that such legislation would be a precedent for many other industries and services to claim the need for relief, particularly during the current economic downturn. Like trade protectionism, legislation that grants special relief from anti-trust legislation can rapidly spread throughout an economy, with devastating results for consumers and overall economic efficiency and productivity.

Raises Health Care Costs to Consumers, Taxpayers, Health Insurers, Employers, and the Federal Government

- Allowing pharmacists to engage in price fixing, boycotts, and other anti-competitive behavior will raise health care costs for consumers, taxpayers, health insurers, employers, and government assistance programs.
- An analysis by an independent economic consulting firm found that providing an antitrust exemption to independent pharmacists would increase costs to consumers, payers, and Medicare by nearly \$30 billion over the next five years.ⁱⁱ



- As health care costs continue to rise, consumers will face even higher prices for health care coverage. According to the Federal Trade Commission, seniors would be particularly harmed if this exemption goes forward as they experience price increases for much-needed medication.ⁱⁱⁱ
- Health care costs would rise for both government and private programs that purchase prescription drugs. According to the Congressional Budget Office, state and local governments would experience a \$20 million increase in their health insurance premiums for state and local employees over the next five years, and roughly 25 percent of that cost could be passed on to their employees.^{iv}
- H.R. 1204 would empower certain independent pharmacists to stifle efforts by payers to implement cost containment strategies, which have proven to yield significant health care savings. Purchasers' ability to design formularies that encourage price competition or encourage the use of mail-order pharmacies would be seriously impeded.

Limits Consumer Choice and Restricts Access to Health Care

- Consumers could have limited access to prescription drugs as certain pharmacies could boycott plans participating in Medicare and commercial plans that do not meet their demands for higher fees. Those living in rural areas could be especially affected by a boycott due to the limited number of pharmacies.
- H.R. 1204 could hasten the erosion of employer-sponsored health insurance because as health care costs increase, employers would likely scale back, reduce, or even eliminate health care coverage for their employees.
- As prescription drugs become more costly, some individuals may be forced to go without needed medications.

Fails to Improve the Quality of Health Care

- H.R. 1204 contains no provision aimed at improving patient safety, quality, affordability, or consumer access. Instead, the bill focuses solely on increasing revenues for pharmacies at the expense of consumers.
- Antitrust immunity would provide these independent pharmacists with powerful tools to block the use of innovative arrangements for the delivery and financing of pharmaceuticals.
- H.R. 1204 would erode competitive market pressures that drive pharmacies to improve quality and efficiency in order to compete more effectively.

ⁱ David Wales, Federal Trade Commission, *Prepared Statement Before the Antitrust Task Force of the Committee on the Judiciary, United States House of Representatives, Concerning H.R. 971 "The Community Pharmacy Fairness Act of 2007"* (Washington, D.C.: October 18, 2007).

ⁱⁱ Peter J. Rankin, Monica Noether, Emily Telleen-Lawton. CRA International, *The Cost of Independent Pharmacy Antitrust Exemptions* (Boston, MA: May 2007).

ⁱⁱⁱ David Wales, Federal Trade Commission, *Prepared Statement Before the Antitrust Task Force of the Committee on the Judiciary, United States House of Representatives, Concerning H.R. 971 "The Community Pharmacy Fairness Act of 2007"* (Washington, D.C.: October 18, 2007).

^{iv} Congressional Budget Office, *Cost Estimate: H.R. 971, Community Pharmacy Fairness Act of 2007* (Washington, D.C.: September 26, 2008). Note: CBO scored the legislation as costing \$640 million to the federal government over the next ten years; however, their score does not include the increased costs to commercial payers and patients as a result of antitrust immunity.