Texas Medical Association; a past president of the Harris County Academy of General Practice; and a former committee member of the American Medical Association. He found and served as the first chief of staff of the Northeast Medical Center Hospital, and he was a medical staff member at both St. Joseph Hospital and Memorial Baptist Hospital in Houston.

Dr. McKay even found a way to combine his love of medicine with his devotion to his country. In 1942, he enlisted in the U.S. Army Medical Corps as a 1st lieutenant. Serving until 1946, he held the rank of major at the time of his discharge.

Despite the pressures and long hours Dr. McKay spent caring for the health of his neighbors, he also found time to serve his community in other ways. A long-time member of the Humble Area Chamber of Commerce, Dr. McKay was the recipient of the chamber's Outstanding Citizen Award—which was later renamed the Haden E. McKay Award. Dr. McKay was a longtime member of the Humble Intercontinental Rotary Club, of which he was a charter member and a past president, and he was an active member of the First United Methodist Church of Humble.

Dr. McKay was a member of the Masonic Lodge and the Arabia Shrine. He not only was the recipient of a 50-year Masonic membership pin, but he was presented with the Sam Houston Award by the Most Worshipful Grand Master of the Grand Lodge of the State of Texas—the highest Masonic award for distinguished service that a Texas Mason can receive.

As mayor of Humble, Dr. McKay played a key role in building a new community center; in remodeling and expanding the new Humble City Hall; in building a new criminal justice center; in building a new fire/EMS center; in building a new public works center; in expanding city parks and the criminal justice center; in spearheading the effort to build Deerbrook Shopping Mall; and in offering a site for the Houston Intercontinental Airport.

Mr. Speaker, it is fair to say that Dr. Haden E. McKay, Jr., was larger than life. For several generations of Humble residents, he was the man who delivered them into this world; cared for them when they were sick; ensured the quality of their life and the lives of their fellow citizens as their mayor; and comforted their survivors following their passing.

Dr. McKay did for my home town what he did for many of his patients—helping it grow from infancy to maturity, providing his wisdom and compassion in time of need, and prescribing effective treatments for the problems that inevitably arise in any community as it grows and matures.

Mr. Speaker, those of us who knew him, loved him, and depended on his wise counsel, were deeply saddened at Dr. McKay's passing. But we know that our community, and those of us whose lives he touched, are much the better for his having spent his life among us. We will continue to honor his memory and the contributions he made to our city's well-being, and we will continue to keep him, and his beloved Lilian, in our thoughts and our prayers.

ANTITRUST HEALTH CARE ADVANCEMENT ACT OF 1996

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 1, 1996

Mr. HYDE. Mr. Speaker, today I am introducing legislation designed to ensure that the antitrust laws permit full utilization of private cooperative initiatives which can help make the Nation's health care system more efficient. H.R. 2925, the Antitrust Health Care Advancement Act of 1996, provides that when doctors, nurses, and hospitals form integrated joint ventures to offer health are services, their conduct will be reviewed on the basis of its reasonabless—rule of reason—for purposes of the antitrust laws. The end result of this case-by-case analysis will be to increase consumer choice while ensuring full competition in the marketplace.

Health care provider networks, or HCPN's—those composed of doctors, hospitals, and other entities who actually deliver health care services—are potentially vigorous competitors in the health care market. Their formation will lead to lower health care costs and higher quality of care. Costs will be lower because contracting directly with health care providers would eliminate an intermediate layer of overhead and profit. Quality will be higher because providers, and particularly physicians, would have direct control over medical decisionmaking. Physicians and other health care professionals are better qualified than insurers to strike the proper balance between conserving costs and meeting the needs of the patient.

Currently, however, there are obstacles to the formation of HCPN's. One of the most serious is the application of the antitrust laws to such groups in a manner which does not allow the network to engage in joint pricing agreements, regardless of whether its effect on competition is positive rather than negative. It is this obstacle, that H.R. 2925 will eliminate, by conforming agency enforcement practices to the manner in which courts have interpreted the law.

Antitrust law prohibits agreements among competitors that fix prices or allocate markets. Such agreements are per se illegal. Where competitors economically integrate in a joint venture, however, agreements on prices or other terms of competition that are reasonably necessary to accomplish to procompetitive benefits of the integration are not unlawful. Price setting conduct by these joint ventures should be evaluated under the rule of reason, that is, on the basis of its reasonableness, taking into account all relevant factors affecting competition.

The antitrust laws treat individual physicians as separate competitors. Thus, networks composed of groups of physicians which set prices for their services as a group will be considered per se illegal under the antitrust laws if they are not economically integrated joint ventures. In the typical provider network, competing physicians relinquish some of their independence to permit the venture to win the business of health care purchasers, such as large employers. These networks promise to provide services to plan subscribers at reduced rates. The ventures also achieve another central goal of health care reform: careful, common sense controls on the provision of unnecessary care.

However, agreements among physicians who retain a great deal of independence but set fees for their services as part of a network bear a striking resemblance to horizontal price fixing agreements. These are the most disfavored and most quickly condemned restraints in antitrust jurisprudence. The key factual question which distinguishes an arrangement that is per se unlawful from one which, upon consideration of the circumstances, is acceptable because it is not anticompetitive in nature, is the degree of integration of the individuals who form the network.

While the antitrust laws provide substantial latitude in the context of collaboration among health care professionals, there is an understandable degree of uncertainty associated with their enforcement. Because each network involves unique facts—differences not only in the structure of the network, but also in the market in which it will compete—the ability of providers to prospectively determine whether their arrangement will be considered legal is limited.

In order to eliminate this uncertainty, and to encourage procompetitive behavior that would otherwise be chilled, the Department of Justice and Federal Trade Commission have established a mechanism for prospective review of proposed HCPN's. In 1993, the antitrust enforcement agencies jointly issued ''Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust.'' These guidelines, which were amended in 1994, contain safety zones which describe providers network joint ventures that will not be challenged by the agencies under the antitrust laws, along with principles for analysis of joint ventures that fall outside the safety zones. A group of providers wishing to embark on a joint venture may request an advisory opinion from the agencies. The agencies, after reviewing the particulars of the proposed venture, then determine whether the network would fall within a safety zone, or otherwise not be challenged under the antitrust laws.

The problem is that these enforcement guidelines articulate standards that are more restrictive than the realities of the agencies' enforcement practices and the current state of the law. They treat as per se illegal many more networks than the antitrust laws would require.

The guidelines promise rule of reason treatment to ventures where the competitors involved are ''sufficiently integrated through the network.'' This is consistent with judicial interpretations of the law. See, e.g., *Broadcast Music, Inc.* v. *Columbia Broadcasting Sys.,* 441 U.S. 1, 19–20 (1979). Where the guidelines diverge significantly from current law, however, is in defining integration solely as the sharing of ''substantial financial risk.'' A network which integrates in any other way—regardless of the extent of that integration, or whether a court interpreting the antitrust laws would find it to be integrated—cannot qualify as a legitimate joint venture. This means that the agencies would not proceed to examine the specific facts of these joint ventures to determine their likely impact on competition; the arrangement would be deemed per se illegal.

This restrictive notion of what constitutes a legitimate joint venture discourages procompetitive ventures from entering the health care marketplace, under the guise of antitrust enforcement. It excludes potential provider networks which would mean an expanded set of

consumer choices and increased competition, and thereby, lower costs, for health care services.

H.R. 2925 overcomes this barrier by requiring that the conduct of an organization meeting the criteria of a health care provider network be judged under the rule of reason. The result will be to permit a case-by-case determination as to whether the conduct of that HCPN would be procompetitive, and thus permissible under the antitrust laws. It is important to understand, however, that this is not an exemption from the antitrust laws. In no event would providers be allowed to set prices or control markets if, in doing so, they have an anticompetitive effect on the market. The normal principles of antitrust law will continue to apply.

Only an organization meeting specified criteria would qualify for the more liberal, rule of reason consideration. The network must have in place written programs for quality assurance, utilization review, coordination of care and resolution of patient grievances and complaints. It must contract as a group, and mandate that all providers forming part of the group be accountable for provision of the services for which the organization has contracted. If these criteria are not met, the entity could still be considered per se illegal.

Rule of reason consideration would be extended not only to the actual performance of a contract to provide health care services, but also to the exchange of information necessary to establish a HCPN. An important limitation on the exchange of information is that it must be reasonably required in order to create a HCPN. Further, information obtained in that context may not be used for any other purpose.

H.R. 2925 delegates to the Department of Justice and the Federal Trade Commission authority to specify how rule of reason consideration would be implemented under these circumstances.

Mr. Speaker, the Antitrust Health Care Advancement Act of 1996 means greater choice for consumers regarding health care services and the delivery of quality health care at lower price. Later this month, on February 27 and 28, the full Judiciary Committee will be holding hearings on health care reform initiatives, both in the antitrust area and in the liability area. H.R. 2925 will be one of the proposals considered in those hearings.

GUAM COMMONWEALTH PROCESS MOVING TOWARD CLOSURE

HON. ROBERT A. UNDERWOOD

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 1, 1996

Mr. UNDERWOOD. Mr. Speaker, I had the privilege of participating in a meeting in San Francisco earlier this week with the Governor of Guam, the Honorable Carl T.C. Gutierrez, the Guam Commission on Self-Determination, and the Deputy Secretary of the Interior, the Honorable John Garamendi. Mr. Garamendi will be soon named as the President's Special Representative for the Guam Commonwealth discussions. The members of the Guam Commission on Self-Determination who participated in this meeting with the Governor included Presiding Judge Alberto Lamorena, Senator Hope Cristobal, Senator Francis Santos, Mayor Francisco Lizama, former Senator Jose R. Duenas, and Youth Congress Speaker Rory Respicio.

The Guam Commonwealth process that we are engaged in sorely needed a jump start, and the meeting in San Francisco renewed the commitment of the President and the leadership of Guam to an improved political status for our island. I am pleased that the administration has refocused on the Guam Commonwealth, and that bringing some form of closure to this process is the common goal of the participants.

The people of Guam are growing increasingly frustrated by the lack of progress on the Guam Commonwealth. There is a growing sense that the Commonwealth discussions will continue to drag on with no end in sight. This is not acceptable to the people of Guam. Our patience has limits, but our resolve is not diminished. That is why I am particularly encouraged by the consensus to complete the current discussions in a timely manner, and to wrap up these discussions by early this summer.

It is important to note that Mr. Garamendi reaffirmed in San Francisco that progress already made, and agreements already reached with Guam, will be honored.

Once the Clinton administration has completed its discussions with the Guam Commission on Self-Determination, the focus of our efforts will shift to the U.S. Congress, which has plenary authority over the territories.

I commend Governor Gutierrez, the Guam Commission on Self-Determination, and Mr. Garamendi for this very good beginning. I look forward to continuing the progress for the Guam Commonwealth, and to advancing the cause of self-government for the people of Guam in this legislative body.

PLAYING WITH FIRE

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 1, 1996

Mr. COLEMAN. Mr. Speaker, the past 2 months have brought into sharp focus the lengths our new House Majority will go to get their way. The Republicans have virtually abandoned any pretense of true debate and discussion of differing views as they have literally stalled the functions of government in an attempt to force their extreme priorities on the President and the American people.

Twice, the Republicans shut down the Federal Government because the President and Congressional Democrats wanted to balance the budget without large tax breaks for the wealthy, and without the deep cuts in Medicare, Medicaid, education, and the environment needed to pay for them. House Republicans seriously miscalculated the President's resolve and thought closing our Nation's Social Security offices, Medicare offices and national parks, would force him to sign their budget, a right wing vision of how America should be run. To his credit, the President did not succumb to this pressure.

Now, once again, the Republicans want to take this country down the road of irresponsibility; this time with very dangerous consequences. Republicans want to throw our country into default be refusing to extend America's borrowing authority. This would jeopardize our Nation's credit rating—currently the highest in the world. Not only would this throw the world's financial markets into a tailspin, and would cause the value of the dollar to plummet worldwide, it would have a devastating impact on hard-working American families who are struggling to pay their own bills and obligations.

The reason we must raise our debt limit is because America must issue bonds and borrow money to meet its current obligations, even as we gradually eliminate all borrowing to balance the Federal budget. Those obligations include $30 billion in Social Security checks, which would not be issued if the Government goes into default next month. It would also mean that no tax refunds would be paid to Americans who are owed these funds. And it would prevent America from making payments on its other financial obligations, which would mean that America's financial credibility—unquestioned throughout our history—would be destroyed.

The result? Interest rates would go up on credit cards, home mortgages, and loans. Average Americans would pay a heavy price for the Republicans' childlike behavior for decades. Moody's Investors Service announced recently that for the first time in history it was considering lowering the credit rating for certain U.S. Treasury bonds.

The reason? Because NEWT GINGRICH and his extremist allies would rather promulgate their right-wing agenda than compromise. The Republicans understand the need to raise the debt limit. In their Seven Year Balanced Budget Reconciliation Act, even after cutting Medicare and Medicaid, they, themselves, call for the raising of the debt limit by $5.5 trillion.

America paid its bills during the Reagan-Bush years. When a Republican President controlled the White House and Democrats controlled one or both Houses of Congress, and we borrowed to pay for annual deficits, the debt limit was raised 27 times. Our predecessors understood the importance of keeping our financial obligations. Now, the Republican-run Congress is willing to throw that away and risk financial catastrophe in order to score political points.

The Republicans have said they will use any means at their disposal to force the President to accept their program.

America must not default on its debt. We are the preeminent financial power in the world because we keep our word. If we allow that faith to be damaged, our economy will be hurt in ways that will hit every family in the pocketbook.

Congress should not go into recess, as the Republicans propose to do, until we vote to raise the debt limit. The situation will become critical by the end of February unless we do so.

On January 22, the Treasury Secretary notified the Congressional leadership by letter, that unless the debt ceiling is increased, he would have to take additional steps to prevent default in mid-February, and that even those steps would provide funds only until March 1. Congress should take action this week to enact a clean debt limit increase.

It is time to raise the debt limit with no gimmicks, conditions, threats or delays. The American people deserve congressional action, not watching a parade of politicians go to recess.