

110TH CONGRESS  
1ST SESSION

# H. R. 971

To ensure and foster continued patient safety and quality of care by making the antitrust laws apply to negotiations between groups of independent pharmacies and health plans and health insurance issuers (including health plans under parts C and D of the Medicare Program) in the same manner as such laws apply to protected activities under the National Labor Relations Act.

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 2007

Mr. WEINER (for himself and Mr. MORAN of Kansas) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To ensure and foster continued patient safety and quality of care by making the antitrust laws apply to negotiations between groups of independent pharmacies and health plans and health insurance issuers (including health plans under parts C and D of the Medicare Program) in the same manner as such laws apply to protected activities under the National Labor Relations Act.

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 “Community Pharmacy  
3 Fairness Act of 2007”.

4 **SEC. 2. APPLICATION OF THE ANTITRUST LAWS TO INDE-  
5 PENDENT PHARMACIES NEGOTIATING WITH  
6 HEALTH PLANS.**

7 (a) **IN GENERAL.**—Any independent pharmacies who  
8 are engaged in negotiations with a health plan regarding  
9 the terms of any contract under which the pharmacies pro-  
10 vide health care items or services for which benefits are  
11 provided under such plan shall, in connection with such  
12 negotiations, be entitled to the same treatment under the  
13 antitrust laws as the treatment to which bargaining units  
14 which are recognized under the National Labor Relations  
15 Act are entitled in connection with activities described in  
16 section 7 of such Act. Such a pharmacy shall, only in con-  
17 nection with such negotiations, be treated as an employee  
18 engaged in concerted activities and shall not be regarded  
19 as having the status of an employer, independent con-  
20 tractor, managerial employee, or supervisor.

21 (b) **PROTECTION FOR GOOD FAITH ACTIONS.**—Ac-  
22 tions taken in good faith reliance on subsection (a) shall  
23 not be the subject under the antitrust laws of criminal  
24 sanctions nor of any civil damages, fees, or penalties be-  
25 yond actual damages incurred.

1           (c) NO CHANGE IN NATIONAL LABOR RELATIONS  
2 ACT.—This section applies only to independent phar-  
3 macies excluded from the National Labor Relations Act.  
4 Nothing in this section shall be construed as changing or  
5 amending any provision of the National Labor Relations  
6 Act, or as affecting the status of any group of persons  
7 under that Act.

8           (d) EFFECTIVE DATE.—The exemption provided in  
9 subsection (a) shall apply to conduct occurring beginning  
10 on the date of the enactment of this Act.

11          (e) LIMITATION ON EXEMPTION.—Nothing in this  
12 section shall exempt from the application of the antitrust  
13 laws any agreement or otherwise unlawful conspiracy that  
14 excludes, limits the participation or reimbursement of, or  
15 otherwise limits the scope of services to be provided by  
16 any independent pharmacy or group of independent phar-  
17 macies with respect to the performance of services that  
18 are within their scope of practice as defined or permitted  
19 by relevant law or regulation.

20          (f) NO EFFECT ON TITLE VI OF CIVIL RIGHTS ACT  
21 OF 1964.—Nothing in this section shall be construed to  
22 affect the application of title VI of the Civil Rights Act  
23 of 1964.

24          (g) NO APPLICATION TO SPECIFIED FEDERAL PRO-  
25 GRAMS.—Nothing in this section shall apply to negotia-

1 tions between independent pharmacies and health plans  
2 pertaining to benefits provided under any of the following:

3 (1) The Medicaid Program under title XIX of  
4 the Social Security Act (42 U.S.C. 1396 et seq.).

5 (2) The State Children’s Health Insurance Pro-  
6 gram (SCHIP) under title XXI of the Social Secu-  
7 rity Act (42 U.S.C. 1397aa et seq.).

8 (3) Chapter 55 of title 10, United States Code  
9 (relating to medical and dental care for members of  
10 the uniformed services).

11 (4) Chapter 17 of title 38, United States Code  
12 (relating to Veterans’ medical care).

13 (5) Chapter 89 of title 5, United States Code  
14 (relating to the Federal employees’ health benefits  
15 program).

16 (6) The Indian Health Care Improvement Act  
17 (25 U.S.C. 1601 et seq.).

18 (h) DEFINITIONS.—For purposes of this section:

19 (1) ANTITRUST LAWS.—The term “antitrust  
20 laws”—

21 (A) has the meaning given it in subsection  
22 (a) of the first section of the Clayton Act (15  
23 U.S.C. 12(a)), except that such term includes  
24 section 5 of the Federal Trade Commission Act

1 (15 U.S.C. 45) to the extent such section 5 ap-  
2 plies to unfair methods of competition; and

3 (B) includes any State law similar to the  
4 laws referred to in subparagraph (A).

5 (2) HEALTH PLAN AND RELATED TERMS.—

6 (A) IN GENERAL.—The term “health  
7 plan”—

8 (i) means a group health plan or a  
9 health insurance issuer that is offering  
10 health insurance coverage;

11 (ii) includes a prescription drug plan  
12 offered under part D of title XVIII of the  
13 Social Security Act and a Medicare Advan-  
14 tage plan offered under part C of such  
15 title; and

16 (iii) includes any entity that con-  
17 tracts with such a plan or issuer for the  
18 administering of services under the plan or  
19 coverage.

20 (B) HEALTH INSURANCE COVERAGE;  
21 HEALTH INSURANCE ISSUER.—The terms  
22 “health insurance coverage” and “health insur-  
23 ance issuer” have the meanings given such  
24 terms under paragraphs (1) and (2), respec-  
25 tively, of section 733(b) of the Employee Retire-

1           ment Income Security Act of 1974 (29 U.S.C.  
2           1191b(b)).

3           (C) GROUP HEALTH PLAN.—The term  
4           “group health plan” has the meaning given that  
5           term in section 733(a)(1) of the Employee Re-  
6           tirement Income Security Act of 1974 (29  
7           U.S.C. 1191b(a)(1)).

8           (3) INDEPENDENT PHARMACY.—The term  
9           “independent pharmacy” means a pharmacy which  
10          is not owned (or operated) by a publicly traded com-  
11          pany. For purposes of the previous sentence, the  
12          term “publicly traded company” means a company  
13          that is an issuer within the meaning of section  
14          2(a)(7) of the Sarbanes-Oxley Act of 2002 (15  
15          U.S.C. 7201(a)(7)).

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