CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

January 11, 2008

H.R. 971
Community Pharmacy Fairness Act of 2007

As ordered reported by the House Committee on the Judiciary on November 7, 2007

SUMMARY

H.R. 971 would create an exemption to antitrust laws for five years to permit independent pharmacies to negotiate collectively with health plans and issuers of health insurance over payment rates and other contract terms. That exemption would apply to negotiations between independent pharmacies and operators of prescription drug plans offered under part D of Medicare. However, the exemption would not apply to most other federal health insurance programs.

Enacting the bill would affect federal revenues and direct spending for Medicare Part D, Medicaid, and the Federal Employees Health Benefits (FEHB) program, beginning in 2009. CBO estimates that enacting the bill would reduce federal tax revenues by $115 million over the 2009-2013 period and by $130 million over the 2009-2018 period. Social Security payroll taxes, which are off-budget, would account for about 30 percent of those totals.

CBO estimates that enacting the bill would increase federal direct spending for health benefits by $566 million over the 2008-2013 period and by $597 million over the 2008-2018 period. The combined effect of the estimated changes in revenues and direct spending would reduce surpluses or increase deficits by $727 million over the 2009-2018 period.

In addition, CBO estimates that enacting the bill would increase discretionary spending by federal agencies for FEHB premiums for current employees by $12 million over the 2009-2013 period, assuming appropriation of the necessary amounts.

H.R. 971 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt state antitrust laws. CBO estimates that because the preemption would only limit the application of state law, the mandate would impose no costs on state, local, or tribal governments.

As a result of this legislation, some state, local, and tribal governments would incur higher expenses as purchasers of health care for their employees and as providers of health care under Medicaid. However, those costs would not result from intergovernmental mandates.

This bill contains no private-sector mandates as defined by UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 971 is shown in the following table. The costs of this legislation fall within budget functions 550 (health) and 570 (Medicare).

BASIS OF ESTIMATE

H.R. 971 would allow independent pharmacies to negotiate collectively with health plans and issuers of health insurance over payment rates and other contract terms. Under the bill, such negotiations would be entitled to the same treatment under the antitrust laws as the treatment to which bargaining units that are recognized under the National Labor Relations Act are entitled. To qualify for the exemption, the pharmacies participating in a collective negotiation could not constitute more than 1 percent of the U.S. market or 10 percent of the market in a region (as defined by the Medicare Part D program). That exemption from the antitrust laws, however, would not apply to negotiations between independent pharmacies and health plans pertaining to most federal health insurance benefits, with the exception of prescription drug plans offered under part D of Medicare. The exemption from antitrust law for independent pharmacies would be effective for five years beginning on the date of the enactment of this bill.

ESTIMATED BUDGETARY EFFECTS OF H.R. 971

	By Fiscal Year, in Millions of Dollars												
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2008-2013	2008-2018
CHANGES IN REVENUES													
Income and HI Payroll Taxes (on-budget)	0	-5	-10	-20	-20	-25	-10	0	0	0	0	-80	-90
Social Security Payroll Taxes (off-budget)	0	-0	-5	-10	-10	-10	-5	0	0	0	0	-35	-40
Total Changes	0	-5	-15	-30	-30	-35	-15	0	0	0	0	-115	-130
CHANGES IN DIRECT SPENDING													
Medicare													
Estimated Budget Authority	0	30	80	140	130	160	30	0	0	0	0	540	570
Estimated Outlays	0	30	80	140	130	160	30	0	0	0	0	540	570
Other Federal Programs													
Estimated Budget Authority	0	1	4	7	7	7	1	0	0	0	0	26	27
Estimated Outlays	0	1	4	7	7	7	1	0	0	0	0	26	27
Total Changes													
Estimated Budget Authority	0	31	84	147	137	167	31	0	0	0	0	566	597
Estimated Outlays	0	31	84	147	137	167	31	0	0	0	0	566	597
NET IMPACT ON THE FEDERAL BUDGET													
Estimated Increase in Deficits or Decrease in Surpluses	0	36	99	177	167	202	46	0	0	0	0	681	727

Notes: HI = Hospital Insurance (Part A of Medicare).

Implementing H.R. 971 would increase discretionary spending by federal agencies for health insurance premiums for current employees enrolled in the Federal Employees Health Benefits program by an estimated $12 million over the 2009-2013 and 2009-2018 periods, assuming appropriation of the necessary amounts.

Revenues

CBO estimates that H.R. 971, if enacted, would increase payments for prescription drugs distributed by independent pharmacies by about 1 percent in 2010, when the majority of the contracts affected by the policy would have been renegotiated. CBO's estimate is based in part on data gathered through interviews with industry experts and representatives of the pharmacy and health plan industries. CBO's analysis took into account both the market shares of independent pharmacies and the desire of health plans to establish an attractive

network of retail pharmacies or to meet adequacy-of-network requirements. CBO also took into account the duration of typical contracts in estimating the effects of the bill.

The increased cost to plans for prescription drugs would increase premiums for group health insurance by less than 0.1 percent in 2010, before accounting for the responses of health plans, employers, and workers to the higher premiums that would likely be charged under the bill. Those responses would include reductions in the scope or generosity of health insurance benefits, such as increased deductibles or higher copayments. CBO expects that those behavioral responses would offset 60 percent of the potential impact of the bill on the total costs of health plans.

The remaining 40 percent of the potential increase in costs would occur in the form of higher spending for health insurance. Those costs would be passed through to workers, reducing both their taxable compensation and other fringe benefits. For employees of private firms, CBO assumed that all of that increase would ultimately be passed through to workers. The estimate assumes that state, local, and tribal governments would absorb 75 percent of the increase and that changes in their workers' taxable income and other fringe benefits would offset the remaining one-quarter of the increase.

Those reductions in workers' taxable compensation would lead to lower federal tax revenues. CBO estimates that federal tax revenues would fall by $5 million in 2009 and by $130 million over the 2008-2018 period if H.R. 971 were enacted. Social Security payroll taxes, which are off-budget, would account for about one-third of those totals.

Direct Spending

H.R. 971 would affect negotiations between independent pharmacies and health plans that provide prescription drug benefits under Part D of Medicare. CBO estimates that the bill, if enacted, would increase payments for prescription drugs distributed by independent pharmacies by about 1 percent by 2010, and would therefore increase federal direct spending for Part D of Medicare by $540 million over the 2008-2013 period and by $570 million over the 2008-2018 period.

The bill would maintain antitrust liability for independent pharmacies in negotiations with health plans that provide prescription drug benefits for certain other federal health programs, such as Medicaid and the FEHB program. However, to take advantage of that limitation on the ability of independent pharmacies to bargain collectively, health plans would have to conduct separate negotiations for their Medicaid or FEHB populations and for their commercial business. CBO anticipates that some plans would choose not to conduct such separate negotiations because that could reduce their leverage for obtaining discounts. CBO

expects that the effect on Medicaid and FEHB of enacting H.R. 971 would be about one-quarter of the effect in the private sector. As a result, CBO estimates that enacting H.R. 971 would increase federal spending for Medicaid and the FEHB program by $26 million over the 2008-2013 period and $27 million over the 2008-2018 period.[1]

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

Intergovernmental Mandates

H.R. 971 contains an intergovernmental mandate, but CBO estimates that the mandate would impose no costs on state, local, or tribal governments. By exempting certain pharmacies from state antitrust laws, the bill would preempt state law, and that preemption would be a mandate as defined in UMRA. However, the bill would not require states to take action as regulators in order to comply with the new exemption, and in some cases it might reduce their oversight responsibilities.

Other Impacts

With certain pharmacies exempted from antitrust laws, state, local, and tribal governments would experience an increase in premiums for health insurance for their employees. CBO estimates that those governments would face additional costs of about $20 million over the 2008-2013 period. This estimate reflects the assumption that governments would shift roughly 25 percent of the additional costs to their employees.

The bill would maintain antitrust liability for pharmacies that provide services for federal health benefit programs, including Medicaid. However, those programs would not be completely shielded from the market changes precipitated by the bill. Consequently, CBO estimates that state expenditures for Medicaid would increase by about $13 million over the 2008-2013 period.

H.R. 971 contains no private-sector mandates as defined by UMRA.

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1. Only the government's share of premiums for federal retirees enrolled the FEHB program is classified as direct spending. CBO estimates that implementing H.R. 971 would also increase discretionary spending by federal agencies for FEHB premium payments for current employees by $12 million over the 2009-2013 and 2009-2018 periods. (Federal spending for active workers participating in the FEHB program is included in the appropriations for federal agencies, and therefore is discretionary.)

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