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Before the

**UNITED STATES HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
ANTITRUST TASK FORCE**

*Hearing on the Impact of our Antitrust Laws on
Community Pharmacies and their Patients*

October 18, 2007

Good morning Chairman Conyers, Ranking Member Keller, and Members of the Task Force. My name is Peter Rankin. I'm a Principal at CRA International, an economics and management consulting firm.

I testify today to raise concerns regarding the economic and unintended consequences of H.R. 971. The proposed legislation would provide antitrust exemptions to pharmacies not owned or operated by a publicly traded company. Supporters of this bill believe that independent pharmacies need an antitrust exemption because they are at a competitive disadvantage in negotiating contracts.

My analysis and research leads me to conclude that such a drastic policy change is not warranted and I will focus on three points:

- First: Patients and payors, including Medicare, would bear the burden of higher costs. A conservative estimate is that the bill would increase expenditures by nearly \$30 billion over five years, nearly a quarter of which would be higher federal spending on Medicare Part D.

- Second: Antitrust waivers for independent pharmacies are not warranted.
- Third: In general, antitrust waivers are inefficient and threaten to raise additional competitive concerns.

I would like to submit for the record in my written testimony CRA's report on this legislation.

1. Antitrust waivers are expensive

Antitrust waivers would allow independent pharmacies to collude on pricing and services in negotiations with health insurers and PBMs. Considering only the direct cost effects of increases in charges, independent pharmacy waivers will increase spending by up to \$29.6 billion over five years (or an increase of up to 11.8 percent), with nearly one-quarter of that amount accruing to Medicare Part D plans.

These costs are likely to be ultimately passed on to Medicare, health insurers, employers, and patients. As costs increase, patients fill fewer prescriptions and employers will likely scale back, reduce, or even eliminate health care coverage for their

employees. Including consideration of reduced or eliminated access to health care, the total costs of independent pharmacy antitrust exemptions exceed the financial costs estimated by the CRA report.

2. Antitrust waivers for independent pharmacies are not warranted.

There are examples of independent pharmacies with economic difficulties. However, antitrust laws are not designed to protect individual pharmacies that may be harmed by competition, but rather to insure that consumer welfare is maintained through access to pharmacies with reasonable prices and quality. Current antitrust laws provide legitimate mechanisms for pharmacies to negotiate with PBMs, when such collaboration enhances the quality or efficiency of care to patients, and independent pharmacies already have organizations that can collectively represent their interests.

3. Antitrust waivers are not effective

The Federal Trade Commission and Department of Justice actively enforce the antitrust laws in the health care industry. The regulatory agencies and most economists have regularly dismissed

the concept of combating perceived competitive imbalances in market power by creating "countervailing" market power. The appropriate response, instead, is to determine if there is a legitimate competitive imbalance and address the economic factors creating that imbalance.

Antitrust waivers legalize collusive behavior to create market power. Relying on waivers to address perceived competitive imbalances requires continuous adjustment and interference in economic markets and runs the risk of spreading competitive imbalance to related markets as the protected entities engage in other lines of business.

Conclusion

Antitrust exemptions are drastic and expensive tools to address a perceived competitive imbalance between independent pharmacies and PBMs. My analysis leads me to conclude that no such competitive imbalance exists in this area. To the extent that prices paid to pharmacies have been reduced, these price reductions have benefited consumers. Antitrust exemptions amount to a wealth transfer from payors and patients to independent pharmacies of up to \$29.6 billion over five years.