WASHINGTON COUNSEL, P.C.

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Chris Jennings	Robert M. Rozen
COMPANY:	DATE: February 28, 2000
FAX NUMBER: 456-5557	TOTAL NO. OF PAGES INCLUDING COVER: 9
PHONE NUMBER:	SENDER'S PHONE NUMBER: (202) 293-7474
RE:	SENDER'S FAX NUMBER: (202) 293-8811

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Chris:

As we discussed last week, I have attached some short pieces on H.R. 1304, legislation the AMA is seeking that would permit independent practice physicians to collectively bargain with health plans to raise their reimbursement rates. The docs claim this is all about equality. DOJ and the FTC say that is just not true; both agencies have issued guidelines permitting physicians to join together to discuss quality issues. H.R. 1304 is all about money: that is, excluding non-physician providers and forcing higher reimbursement rates. Attached is the following:

1) A paper in opposition to H.R. 1304 from the coalition of non-physician providers, employers and health plans.

2) A letter from Consumer Federation of America in strong oppositions

3) A paper that cites recent examples of price-fixing and exclusionary practices by physicians that have been halted by the anti-trust laws.

This is the worst healthcare related legislation to receive serious consideration in some time; and that says a lot. This issue needs your more active involvement in opposition.

Bobby

1150 17TH STREET, N.W. SUITE 601 WASHINGTON, D.C. 20036

The Antitrust Coalition for Consumer Choice in Health Care

OPPOSE SPECIAL ANTITRUST EXEMPTIONS FOR HEALTH CARE PROFESSIONALS

H.R. 1304 ("Quality Health-Care Coalition Act of 1999") would create a broad antitrust exemption to permit doctors and other health care professionals to bargain collectively with health plans. The bill undermines efforts to control health care costs for consumers and to provide consumers with a wide range of choices among health care plans. The bill does not protect patients' rights or assure that the legitimate concerns of health care professionals will be addressed. Instead, it provides incentives for health care professionals, such as doctors and pharmacists, to engage in price-fixing, boycotts and market allocation agreements that would otherwise be illegal under the antitrust laws. Such conduct will result in higher health care costs for patients, employers, and the Medicare and Medicaid programs and will put nonphysician providers at an unfair competitive disadvantage.

Summary of the Bill

The bill would grant to health care professionals who are engaged in negotiations with a health plan (including group health plans, health insurance issuers, and Medicare+Choice and Medicaid managed care plans) an exemption under the antitrust laws similar to that granted to bargaining units recognized under the National Labor Relations Act ("NLRA").

Reason for opposing H. R. 1304

The bill would increase health care costs and put some providers at an unfair competitive disadvantage: Competition keeps health care costs down in the private sector, as well as in the Medicare and Medicaid programs. The bill would eliminate competition among health care professionals by permitting them to engage in price-fixing, boycotts and market allocation agreements that would otherwise be illegal under the antitrust laws. Under the bill, for example, nothing would prevent all the doctors in a market from combining into a single cartel and demanding exorbitant fee increases at the expense of their patients and taxpayers who fund the Medicare and Medicaid programs. Also, it would permit such cartels to negotiate unfair and exclusionary agreements with health plans that could put nonphysician providers, in particular, at an unfair competitive disadvantage.

No exemption is needed to permit physicians to organize in ways that will benefit consumers or to discuss legitimate quality of care issues: The 1996 DOJ/FTC Health Care Antitrust Guidelines explain how providers can organize networks and joint ventures to contract, or compete directly, with health plans. Through such ventures, providers can work together to offer better care or their own alternatives to health plans.

H.R. 1304 undermines that approach by allowing providers to form cartels that will limit choices and not benefit consumers, and whose only tangible result may be to increase provider incomes at the expense of patient' access to care.

Moreover, H.R. 1304 is not needed to enable providers to discuss collectively with health plans issues involving legitimate quality of care concerns or to bring such issues to the attention of the public. The 1996 DOJ/FTC Guidelines explain that such discussions are lawful under the antitrust laws as long as they do not involve boycotts or other collective activity that could limit the choices available to consumers.

The bill is inconsistent with the labor antitrust exemption granted to other workers: The antitrust labor exemption seeks to balance the importance of competition with our national labor policy. Although they enjoy an antitrust exemption, labor negotiations are subject to strict rules under the NLRA governing the rights and responsibilities of both workers and employers, and are overseen by the National Labor Relations Board ("NLRB"). Physicians and other health care professionals, to the extent they are employees, are covered by the existing antitrust labor exemption.

The special treatment afforded by H.R. 1304 would go much further than the existing labor antitrust exemption. It would cover much more than simply wages and similar terms, and would extend to anything that might be the subject of health plan negotiations. Moreover, it imposes no obligations whatever on negotiating cartels and provides for no regulatory oversight.

The bill is not needed to counter health plans' market power or to challenge the antitrust exemption for the business of insurance: The bill rests on the faulty premises that health care professionals need an antitrust exemption to balance the market power of large health plans and that such plans are protected from scrutiny under the McCarran-Ferguson Act, which provides an antitrust exemption for the business of insurance to the extent it is regulated by state law.

The fact is that health care markets vary greatly across the country, and are subject to rapid change. The exemption in H.R. 1304, however, would apply across the board, including areas where health plans have little leverage or where there is little managed care. Moreover, the McCarran-Ferguson Act exemption does not protect health plans from scrutiny under the antitrust laws for their agreements with third parties who provide services to their members. And, the federal antitrust agencies have frequently asserted jurisdiction over the conduct of health plans -- such as mergers -- when the agencies determined that it could pose a risk to competition among plans or market power over providers.

For all of these reasons, H.R. 1304 should be defeated.

Consumer Federation of America

February 24, 2000

The Honorable Henry J. Hyde
U.S House of Representatives
Washington, DC 20510

The Honorable John Conyers, Jr.
U.S. House of Representatives
Washington, DC 20510

Dear Representatives Hyde and Conyers:

The Consumer Federation of America (CFA) opposes H.R. 1304, which would grant a broad antitrust exemption to self-employed physicians, pharmacists and other health care professionals. CFA vigorously supports the enactment of significant reforms that would improve the quality-of-care offered by managed health care plans and allow health care providers to better advocate on behalf of their patients. However, this bill would likely do more harm than good for consumers.

Instead of hastily granting antitrust immunity to health care providers, Congress should convene a committee or working group representing all stakeholders to more closely examine the implications of this proposal and to arrive at a solution fair to providers, plans, and most importantly, those in need of health care. CFA also advocates the enactment of strong managed care patient protections, vigorous antitrust enforcement against plans and providers and, ultimately, a national health care program accountable to consumers.

H.R. 1304 could result in a number of problems that would take consumers who may already be unhappy with managed care "from the frying pan into the fire", including:

- increased health care costs for consumers, employers and federal and state health care programs;
- reductions in benefits to private plan enrollees and government plan beneficiaries;
- decreased access to health insurance coverage and to federal and state health care programs, such as Medicare and Medicaid, and
- overuse of some health care services and a decline in the coordination of patient care.

H.R. 1304 would authorize the creation of health care cartels, not unions. Current law already allows health care providers who are directly employed by insurance plans to unionize. The bill does not amend the federal labor laws to permit self-employed health care professionals to form a bona fide labor organization. The bill does not establish oversight of the collective bargaining process under the auspices of

the National Labor Relations Board, as is the case for all unions. Rather, the bill amends the federal antitrust laws to grant providers a blanket exemption in negotiating with health plans that covers not only health care quality issues, but also price. This allows the creation of a price-fixing cartel, like the Organization of Petroleum Exporting Countries (OPEC), rather than a union.

Congressional antitrust exemptions are typically accompanied by some type of regulatory oversight of the market. This is true, for example, with exemptions that pertain to collective labor negotiations, the sale of insurance and the creation of agricultural cooperatives. H.R. 1304 would, however, repeal antitrust laws that apply to health care providers without constructing a regulatory framework. This strips consumers of protection from price-fixing cartels without substituting any enforcement authority that can intervene on behalf of consumers who are victimized by unfair price increases or reduced access to health care.

Under H.R. 1304, the economic incentive to collude against consumer interests would be too great to resist for even the most well-intentioned providers, especially physicians. The bill would give physicians the power to collude on price, divide up markets and work in concert to drive competing nonphysician providers out of business, such as nurse midwives and chiropractors. This is not an academic concern. The Department of Justice and the Federal Trade Commission have successfully pursued a number of cases against physician practices for anti-competitive behavior. Moreover, in several of these cases, the physicians involved were not acting to improve quality of care—the motives were clearly related to economic rivalry with nonphysician providers.[1]

The Department of Justice and the Federal Trade Commission state that existing law, as interpreted under the agencies' "Statements of Antitrust Enforcement Policy in Health Care", allow physicians and other providers to work in concert to raise quality-of-

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[1] *Mesa County Physicians Independent Practice Association, FTC Dkt. No. 9284, 63 Fed. Reg. 9549 (Feb. 28, 1998) (Eighty-five percent of physicians in a county worked in concert to raise reimbursement rates with plans.)*

United States v. Federation of Certified Surgeons and Specialists, Inc., 64 Fed. Reg. 5831 (Feb 5, 1999), consent decree in No. 99-167-CIV-T-17F. (Price-fixing by Florida surgeons that performed 87% of general and vascular surgeries in five Tamp hospitals.)

Health Care Management Corp. 107 F.T.C. 285 (1986) (consent order) (Hospital medical staff agreed not to unreasonably restrict podiatrist from practicing at the hospital)

Nurse Midwifery Associates v. Hibbett, 918 F.2d 605 (finding illegal actions by a physician-owned medical malpractice company to cancel insurance of doctors who agreed to collaborate with nurse midwives)

Medical Staff of Memorial Med. Ctr., 110 F.T.C. 541 (1988) (Physician medical staff conspired to prevent nurse midwives from gaining hospital privileges).

Wilk v. American Med. Ass'n. 895 F.2d 352 (355 (7th Cir.), cert. denied (498 U.S. 982) (1990) (AMA boycott to prevent medical physicians from referring patients to or accepting patients from chiropractors).

care issues with insurance plans. To the extent that physicians have genuine concerns about their ability to discuss quality-of-care issues among themselves, they should seek clarification and further guidance from the antitrust agencies, not a blanket exemption unfocused on legitimate quality concerns.

Trade associations representing nurses, physical therapists and nurse midwives oppose H.R. 1304, even though it grants them the same antitrust immunity as physicians. They are understandably concerned that some physicians will use their immunity to collectively demand terms from health plans that would disadvantage competing providers. **This is not just a "turf war" among providers that has no effect on consumers. Nurse midwives, nurse anesthetists and nurse practitioners often provide care of high quality to patients in underserved areas that have been abandoned by physicians.**

CFA has serious concerns regarding health plan mergers and the increasing level of concentration among health insurers. In a number of parts of the country, market concentration among insurers is very high. For consumers, decreased plan competition means fewer choices, higher prices and less access to health care. In fact, health plan concentration may already be affecting the quality of care for consumers. We will continue to advocate vigorous antitrust enforcement by the Department of Justice and the Federal Trade Commission to prevent any accumulation of market power by plans and to prosecute abuse of market power by plans, whether such abuse is visited upon doctors, nurses or consumers.

We will also continue to raise serious concerns about the overall effect of managed care—America's dominant health care delivery model—on consumers and the American health care system. There are a number of bright spots in the delivery of managed care. However, a once-progressive idea for improving the quality and continuity of health care is now plagued by serious problems: an unconscionable preoccupation by many plans with profit over high-quality care ; financial incentives that encourage the provision of less care than may be necessary; nagging doubts about quality-of-care and the continued sharp growth in the number of uninsured Americans.

CFA strongly recommends several measures that could have a much more meaningful impact on problems with managed health care than H.R. 1304:

1. Congress should convene a committee or working group representing all major interests—especially health care consumers—to more closely examine the implications of an antitrust exemption for providers and to offer workable solutions to many of the concerns raised by proponents of this legislation.
2. The Federal Trade Commission and the Department of Justice should step up their efforts to detect and prosecute anti-competitive business practices by managed care organizations and health care providers and to examine more closely the proposed plan mergers with respect to their impact on consumers.

3. The Federal Trade Commission and the Department of Justice should ensure that their guidelines allow providers to easily work together to raise valid quality-of-care concerns with managed care plans.
4. Congress should create a system of national health care focused on quality and access that is accountable to health care consumers, not insurers or providers.

Sincerely,

Senator Howard M. Metzenbaum (Ret.)
Chairman

Travis B. Plunkett
Legislative Director

cc: The Honorable F. James Sensenbrenner, Jr.
The Honorable Bill McCollum
The Honorable George W. Gekas
The Honorable Howard Coble
The Honorable Lamar S. Smith
The Honorable Elton Gallegly
The Honorable Charles T. Canady
The Honorable Bob Goodlatte
The Honorable Ed Bryant
The Honorable Steve Chabot
The Honorable Bob Barr
The Honorable William L. Jenkins
The Honorable Asa Hutchinson
The Honorable Edward A. Pease
The Honorable Christopher Cannon
The Honorable James E. Rogan
The Honorable Lindsey Graham
The Honorable Mary Bono
The Honorable Spencer Bachus
The Honorable Barney Frank
The Honorable Howard L. Berman
The Honorable Rick Boucher
The Honorable Jerrold Nadler
The Honorable Bobby Scott
The Honorable Mel Watt
The Honorable Zoe Lofgren
The Honorable Sheila Jackson Lee
The Honorable Maxine Waters
The Honorable Marty Meehan
The Honorable William Delahunt
The Honorable Robert I.Wexler
The Honorable Steven R. Rothman
The Honorable Tammy Baldwin
The Honorable Anthony David Weiner

EXAMPLES OF PRICE FIXING AND EXCLUSIONARY BOYCOTTS BY DOCTORS

Doctors have frequently been investigated and prosecuted for price-fixing and exclusionary boycotts that would be legal under H.R 1304. Fortunately, active antitrust enforcement has thwarted such conduct. However passage of H.R 1304 would gut this enforcement leading to higher prices and fewer choices for consumers.

Examples of conduct that has been challenged by federal and state enforcement agencies include the following: [1]

- **Puerto Rico physician boycott to increase reimbursement under program to provide health care to the indigent.** This effort culminated in an eight-day strike in 1996 during which many physicians closed their offices and refused to provide non-emergency services. The Federal Trade Commission and the Commonwealth of Puerto Rico obtained a consent decree with the doctors in which they agreed to pay $300,000 in restitution and agreed not to engage in future boycotts.[2]

- **Joint negotiations and price-fixing by Florida surgeons that raised their average annual revenues by more than $14,000.** Last year, the Department of Justice ("DOJ") entered into a consent decree with 29 surgeons who accounted for 87% of the general and vascular surgeries performed in five Tampa, Florida hospitals. DOJ alleged that the surgeons engaged in illegal joint negotiations and price-fixing, which, by the surgeons' own estimate, resulted in an average annual gain of $14,097 in projected revenues for each surgeon.[3]

- **Boycott by emergency room physicians.** In 1994, the FTC obtained a consent decree from a group of trauma surgeons in Florida. The ten surgeons were charged with illegally conspiring to fix fees for their services at two area hospitals. The surgeons refused to deal individually with the hospitals, threatened to cease providing trauma services if their price terms were not met, and to back up that threat, walked out of one trauma center, forcing it to close.[4]

Other health care providers who would receive antitrust exemption under H.R. 1304 have also engaged in exclusionary boycotts such as:

- **Boycott of New York State Employees Prescription Plan by retail druggists.** The FTC obtained a consent decree against five pharmacy chains, an executive of one of the chains, a trade association, and other unnamed pharmacy firms in New York for conspiring to refuse to participate in the state's reduced-rate reimbursement

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[1] Summaries of these cases can be found in "FTC Antitrust Actions in Health Care Services," available at http://www.ftc.govibc/atahcsvs.htm and Department of Justice, "Summary of Antitrust Division Health Care Cases, "available at http://www.usdoj.gov/atr/pubhc/health-care/0000.htm.

[2] *FTC and Commonwealth of Puerto Rico v. College of Physicians-Surgeons of Puerto Rico*, Trade Reg. Rep. (CCH) T 24,335 (D.P.R. 1997).

[3] *United States v. Federation of Certified Surgeons and Specialists*, Inc. and *Pershing Yoakley & Associates, P.C.*, Case No. 99-167-CIV-T-17F (M.D. FL., f3led Jan. 26, 1999). *See* also Proposed Final Judgment, Stipulations, and Competitive Impact Statement, 64 Fed. Reg. 5831 (1999).

[4] Trauma *Associations of North Broward*, Inc., 118 F.T.C. 1130 (1994).

initiative. The FTC charged that actions by the defendants cost the state an estimated $7 million.[5]

Physicians also have acted collectively to restrict competition from non-physician providers. Examples include:

- **Conspiracy by a hospital medical staff to reduce competition by denying hospital privileges to certified nurse-midwives.** The medical staff at Memorial Medical Center ("MMC"), which represented a majority of the practicing physicians in Savannah Georgia, protested the hospital's credentialing committee's decision to grant hospital privileges to a state certified nurse-midwife. In addition, several obstetricians affiliated with MMC threatened to shift their patient admissions to another hospital based on the vote. The FTC alleged that as a result of these threats, the committee reversed itself and denied hospital privileges to the nurse-midwife without a reasonable basis. The FTC secured a consent order that prohibited the medical staff from restricting or recommending denial of hospital privileges for any certified nurse-midwife without adequate grounds.[6]

- **Boycott by the American Medical Association to prevent medical physicians from referring patients to or accepting patients from chiropractors.** The goal in these efforts, which were declared by the Seventh Circuit Court of Appeals to be an unlawful boycott under the antitrust laws, was to deny chiropractors access to hospital diagnostic services and membership on hospital medical staffs, to prevent medical physicians from teaching at chiropractic colleges or engaging in any Joint research, and to prevent any cooperation between the two groups in the delivery of health care services.[7]

- **Conspiracy by anesthesiologists to eliminate competition from certified registered nurse anesthetists ("CRNAs").** Despite the fact that nurse anesthetists are clinically qualified to provide certain anesthesia services under the supervision of an physician, M.D. anesthetists have long viewed CRNAs as competitors and have attempted to eliminate this competition through illegal exclusive dealing contracts with hospitals.[8]

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[5] Chain Pharmacy *Association of New York State*, Inc., 114 F.T.C. 28 (1991).

[6] *Medical Staff of* Memorial *Medical* Center, 110 F.T.C. 541 (1988).

[7] *Wilk v.* American *Med. Ass'n*, 895 F.2d 352, 355 (7th Cir. 1990), cert. denied, 498 U.S. 982 (1990)(holding unlawful the AMA boycott of chiropractors).

[8] *See, e.g., Oltz v. St. Peter's Community Hosp.*, 861 F.2d 1440 (9th Cir. 1988) (affirming lower court decision to grant a new trial on damages where jury found anesthesiologist providers and local hospital liable for attempting to eliminate competition from CRNAs through exclusive dealing contract).

WASHINGTON COUNSEL, P.C.

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TO:	FROM:
Chris Jennings	Robert M. Rozen
COMPANY:	DATE: March 30, 2000
FAX NUMBER: 456-5557	TOTAL NO. OF PAGES INCLUDING COVER: 5
PHONE NUMBER:	SENDER'S PHONE NUMBER: (202) 293-7474
RE: H.R. 1304	SENDER'S FAX NUMBER: (202) 293-8811

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NOTES/COMMENTS:

Chris:

The Judiciary Committee reported the physician antitrust bill on a 26 to 2 vote this morning. It now has 211 cosponsors. The momentum may be slowed a bit, however, as a result of the two attached letters from Bliley-Dingell and Thomas-Stark, raising concerns about the effect of the legislation on health programs within the jurisdiction of their committees. As I noted to you, we have found in our lobbying that those members who know health care policy are quite opposed to the bill. That doesn't include Judiciary Committee members who kept referring to HMOs during the markup as though that was the only type of health insurer that would be affected by the bill.

We don't know yet whether these letters, and one that is coming from Goodling and Boehner, will have any effect on Hastert. The bill has been scheduled for the first week of April. The Speaker promised Campbell floor time in return for his vote on last year's big tax bill.

You can help forestall this effort. A strong statement of administration policy soon will help discourage more cosponsors and raise further doubts. You could strongly denounce antitrust exemptions as ineffective in dealing with quality issues while calling once again on Congress to complete deliberations on the one piece of legislation that is about patient quality: the patients bill of rights.

Bobby

1150 17TH STREET, N.W. SUITE 601 WASHINGTON, D.C. 20036

U.S. House of Representatives
Committee on Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515–6115

March 29, 2000

The Honorable J. Dennis Hastert
Speaker
U.S. House of Representatives
H232 The Capitol
Washington, D.C. 20515

Dear Mr. Speaker:

We understand that the House Judiciary Committee will soon order reported H.R. 1304, the Quality Health-Care Coalition Act of 1999, legislation that would exempt health care professionals from Federal antitrust laws. The Congressional Budget Office (CBO), which analyzed this legislation on March 15, 2000, determined that it could have a significant impact on health care programs within the jurisdiction of the Commerce Committee. In addition, we are currently in conference on the Bipartisan Consensus Managed Care Improvement Act of 1999. As you know, that legislation also deals with, among other matters, the relationship between health care professionals and health plans. For that reason we request that before you schedule this legislation for debate on the House floor, our committee be given an opportunity to review the bill to fully understand its potential implications for the nation's health care system.

H.R. 1304 would grant health care professionals an exemption from the antitrust laws, permitting them to engage in collective negotiations with health plans. Under this legislation, all health care professionals in a geographic area could organize collectively for the purpose of negotiating contractual arrangements with health plans.

CBO has reported that this would result in higher costs for several Federal health programs. We are attaching a March 15, 2000, cost estimate prepared by CBO which concludes that H.R. 1304 could significantly increase direct Federal spending by $11.3 billion over the next 10 years for Medicaid, the State Children's Health Insurance Program, and the Federal Employees Health Benefit Program.

While H.R. 1304 is limited to granting an exemption from certain antitrust rules, the effect of the legislation on Federal laws and programs extends well beyond the purview of the

antitrust agencies and the Congressional committees with antitrust jurisdiction. As we noted earlier, the issue of the relationship of health professionals to health plans is a significant issue in the conference on H.R. 2990. While these provisions do not directly implicate antitrust laws, they are examples of the interplay of various approaches to defining the relationship of health care professionals and health plans.

Thank you for your consideration of this request. We look forward to working with you on this issue.

Sincerely,

Tom Bliley
Chairman

John D. Dingell
Ranking Member

Attachment

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

SUBCOMMITTEE ON HEALTH

March 28, 2000

The Honorable J. Dennis Hastert
Speaker of the House
United States House of Representatives
H-232 Capitol
Washington, D.C. 20515

Dear Mr. Speaker:

The Committee on the Judiciary is considering legislation that would have significant effects on the nation's health care system. The bill, H.R. 1304, would provide health care professionals with an exemption from federal antitrust laws so that they can collectively negotiate with health plans and insurers. This legislation will have significant adverse effects on Medicare and the 38 million seniors who depend on the program to get needed health services. Given this concern, we respectfully request that H.R. 1304 not be scheduled for House floor consideration until we have an opportunity to properly review and express our concerns to the bill.

While the Congressional Budget Office (CBO) has estimated that the bill would not have a direct effect on Medicare spending, this is only because Medicare currently pays private health plans a statutorily fixed fee for recipients who enroll in Medicare+Choice plans. However, this analysis ignores other effects that the bill would have on these seniors. In particular, H.R. 1304 would likely result in increased out-of-pocket expenses and less prescription drug access for Medicare beneficiaries who now obtain care in Medicare+Choice.

Simple economics explains why this would be the case. The CBO cost estimate reports that physicians coalescing into bargaining units would increase physician fees by about 4.5%. If Medicare+Choice plans, paid with the same fixed monthly capitation rate, are faced with higher costs due to the antitrust protections of H.R. 1304 for health professionals, these plans will be forced to decide between the unpleasant option of increasing beneficiary premiums or decreasing coverage of important benefits like prescription drugs. In light of ever-increasing concerns about the financial burden of health care for the elderly, it is important that seniors are adequately protected from increased health care costs and that the increasing number of Medicare beneficiaries that are taking advantage of the comprehensive health benefits provided by Medicare+Choice plans continue to have access to care.

During markup proceedings held by the Committee on the Judiciary, it was apparent that there was some concern on how H.R. 1304 would affect Medicare beneficiaries, as evidenced by the deletion of references to Medicare+Choice organizations in the definition of a health plan affected by the bill. However, this amendment did not affirmatively preclude the broad definition of health plan, as written in the bill, from being interpreted to include Medicare+Choice plans. Moreover, even if the bill was modified to affirmatively exclude Medicare+Choice plans from the scope of H.R. 1304, Medicare beneficiaries may still be exposed to higher monthly premiums and decreased benefits due to the fact that cost-shifting may occur as health plans are faced with higher physician costs in their private sector products.

In an effort to promote dialogue on this matter, we have spoken to the members of the Judiciary Committee, including Rep. Tom Campbell, the bill's chief sponsor, about the bill's implications for Medicare. While they have expressed their desire to work with us to resolve these issues, we continue to have strong concerns about the measure as drafted.

In addition, we have other reservations about the bill. By allowing health professionals to collectively negotiate with health plans, the bill appears to be counterintuitive to the consensus view that Medicare should be modernized through the introduction of greater market competition.

Finally, because the bill will significantly raise the costs of health insurance in the private sector, some Americans who now have insurance will lose coverage if this bill is passed. Moreover, federal tax revenues will decline by $10.9 billion over ten years, since employers would claim larger deductions for these expenses, and employees would receive a greater share of compensation in tax-sheltered benefits.

We view it as our responsibility to ensure that legislation that impacts Medicare and decreases federal tax revenues be fully scrutinized. For the reasons listed above, we request that H.R. 1304 not be scheduled for floor consideration until we and other concerned Members have had an opportunity to review the legislation and provide input in the regular order.

Thank you for your attention to this request. We look forward to working with you on this important matter.

Sincerely,

Fortney Pete Stark
Ranking Member

Bill Thomas
Chairman