



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

October 23, 2009

H.R. 3596

Health Insurance Industry Antitrust Enforcement Act of 2009

As ordered reported by the House Committee on the Judiciary on October 21, 2009

CBO estimates that implementing H.R. 3596 would have no significant cost to the federal government. Enacting the bill could affect direct spending and revenues, but any such effects would not be significant.

Companies that provide health and medical malpractice insurance are currently exempt from the federal antitrust laws insofar as they are engaging in the business of insurance. H.R. 3596 would prohibit such companies from price fixing, bid rigging, or allocating markets while providing coverage for health insurance or medical malpractice claims. The bill's restrictions would not apply to certain collaborative activities involving actuarial services.

Because the bill would establish a new offense, the government would be able to pursue cases that it otherwise would not be able to prosecute. Based on information from the Department of Justice and insurance industry experts, CBO expects that H.R. 3596 would apply to a small number of offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 3596 could be subject to criminal fines, the federal government might collect additional amounts if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent. CBO estimates that any additional revenues and direct spending would not be significant because of the small number of cases likely to be affected.

H.R. 3596 could affect the costs of and premiums charged by private health insurance companies; whether premiums would increase or decrease as a result is difficult to determine, but in either case the magnitude of the effects is likely to be quite small. To the extent that insurers would otherwise engage in the prohibited practices and be prevented from doing so by enactment of this bill, premiums might be lower. (That effect is likely to be small because state laws already bar the activities that would be prohibited under federal law if this bill was enacted.) To the extent that insurers would become

subject to additional litigation, their costs and thus their premiums might increase. Based on information from the Justice Department, the Federal Trade Commission, the National Association of Insurance Commissioners, consumer groups, and private attorneys, CBO estimates that both of those effects would be very small, and thus that enacting the legislation would have no significant effect on the premiums that private insurers would charge for health insurance. Changes in those premiums can affect federal revenues because of the favorable tax treatment that is accorded to employment-based coverage under current law, but any such effects of the legislation would be negligible in CBO's estimation.

H.R. 3596 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

H.R. 3596 would impose a private-sector mandate, as defined in UMRA, on issuers of health insurance and medical malpractice insurance by partially repealing their exemptions from federal antitrust laws. According to state insurance regulators, state laws already prohibit issuers of health insurance and medical malpractice insurance from engaging in practices such as price fixing, bid rigging, and market allocations. CBO estimates the cost of this mandate would not exceed the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs) and Patrick Bernhardt (for the private-sector impact). The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.