



# Congress of the United States

House of Representatives

Washington, DC 20515

May 21, 2007

Chairman John D. Dingell  
Committee on Energy and Commerce  
2125 Rayburn HOB  
Washington, DC 20515

Ranking Member Joe Barton  
Committee on Energy and Commerce  
2322A Rayburn HOB  
Washington, DC 20515

Dear Chairman Dingell and Ranking Member Barton:

We would like to bring your attention to the ability of safety-net health care providers and university health care clinics to continue to obtain drugs at greatly reduced (nominal) prices in order to serve low-income patients and college students. We ask for your help to find an immediate legislative solution to the problem.

Until January 1, 2007, health care providers, including non-profit, outpatient family planning clinics and university health care clinics, were eligible to purchase drugs at drastically reduced prices without impacting the "best" price drug manufacturers are required by federal law to provide to state Medicaid programs. This mechanism is called the Nominal Pricing Exception (NPE). Under the NPE, a manufacturer willing to sell drugs at less than 10% of the average manufacturer price to safety-net providers like these could do so without being hit by enormous increases in its Medicaid rebate payments.

The problem is caused by the unintended consequences of an effort by the Congress to limit the misuse of the NPE by pharmaceutical manufacturers, and, as part of the Deficit Reduction Act, restrict the types of entities that would be eligible to purchase drugs under the NPE after January 1, 2007. The provision specifies four categories of providers who are eligible for nominal priced drugs:

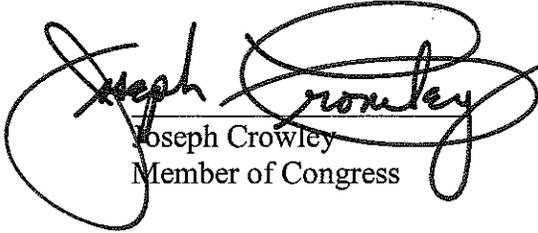
- (I) A covered entity described in section 340(B)(a)(4) of the Public Health Services Act
- (II) An intermediate care facility for the mentally retarded
- (III) A state-owned or operated nursing facility
- (IV) Any other facility or entity that the Secretary determines is a safety net provider to which sales of such drugs at a nominal price would be appropriate based on the factors described in clause (ii).

While the Center for Medicare and Medicaid Services (CMS) was directed to define the fourth category, and was given specific criteria to use, CMS declined to define a class of safety net providers, contrary to expressed Congressional intent.

While most of the family planning clinics do fall under Section 340(B)(a)(4), there are still those clinics, including the university health care clinics, that do not qualify under this section. These healthcare providers will have to close their doors, as they cannot afford to buy the drugs at regular market price.

Again, we ask that you take action on an appropriate legislative vehicle so these clinics can continue to survive and to provide vital services.

Sincerely,



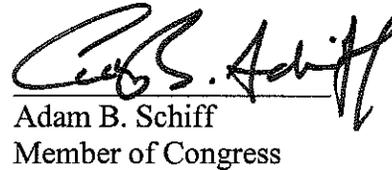
Joseph Crowley  
Member of Congress



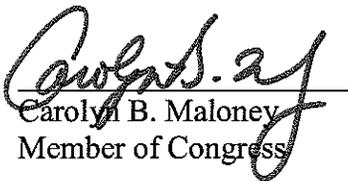
Jim Ramstad  
Member of Congress



Tim Ryan  
Member of Congress



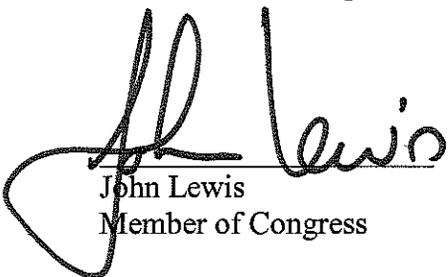
Adam B. Schiff  
Member of Congress



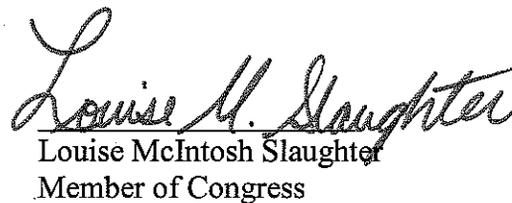
Carolyn B. Maloney  
Member of Congress



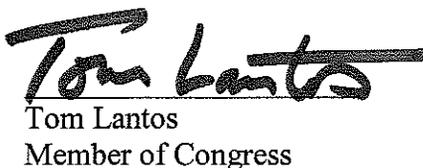
Fortney Pete Stark  
Member of Congress



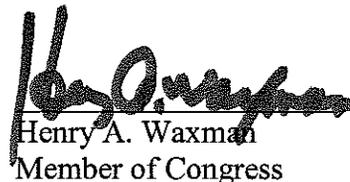
John Lewis  
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Louise McIntosh Slaughter  
Member of Congress

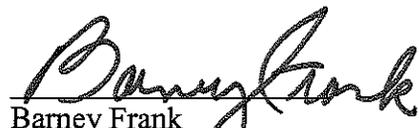


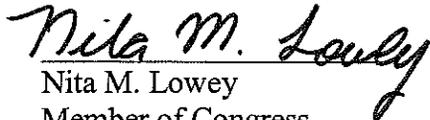
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Barney Frank  
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Nita M. Lowey  
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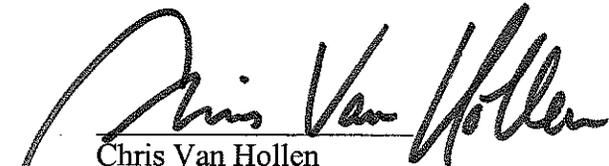
  
Edolphus Towns  
Member of Congress

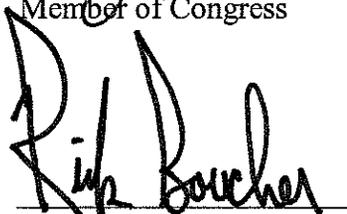
  
Hilda L. Solis  
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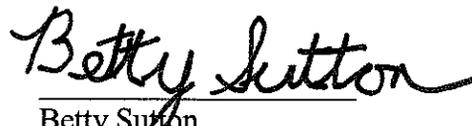
  
Michael M. Honda  
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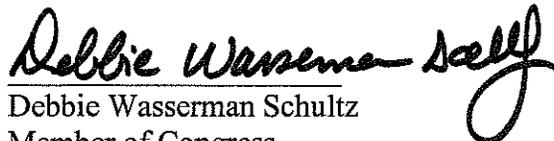
  
Kendrick B. Meek  
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Harry E. Mitchell  
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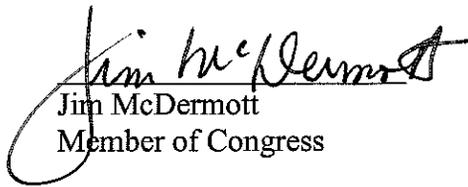
  
Chris Van Hollen  
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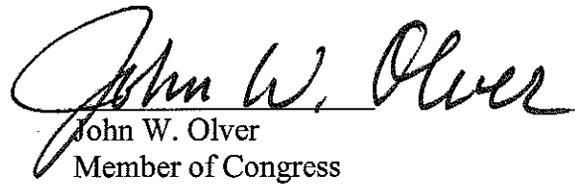
  
Rick Boucher  
Member of Congress

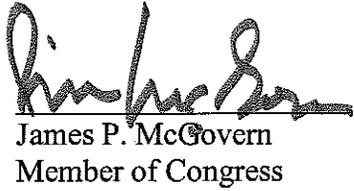
  
Betty Sutton  
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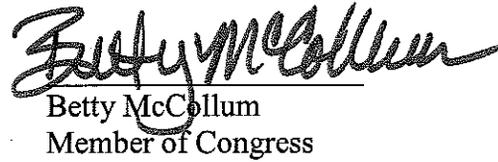
  
Debbie Wasserman Schultz  
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Robert Wexler  
Member of Congress

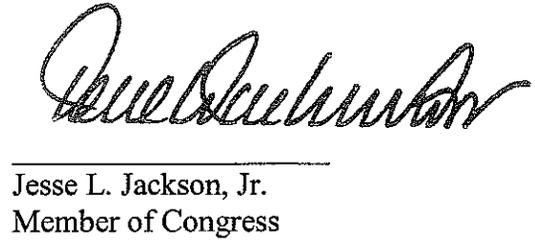
  
Jim McDermott  
Member of Congress

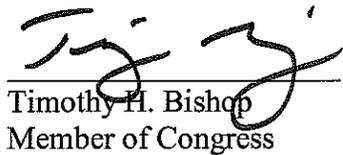
  
John W. Olver  
Member of Congress

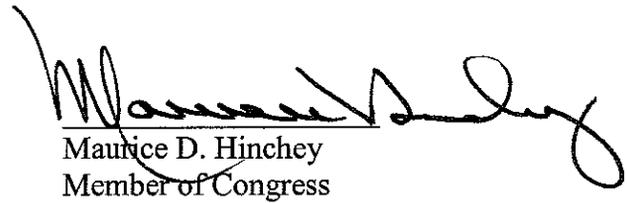
  
James P. McGovern  
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Betty McCollum  
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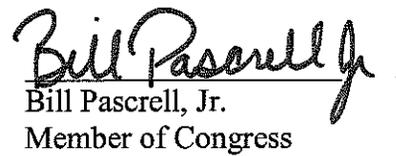
  
Patrick J. Kennedy  
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Jesse L. Jackson, Jr.  
Member of Congress

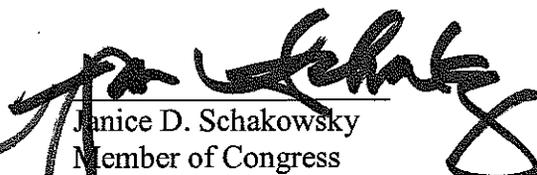
  
Timothy H. Bishop  
Member of Congress

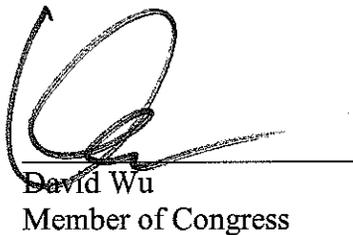
  
Maurice D. Hinchey  
Member of Congress

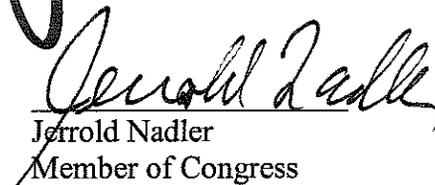
  
Steve Israel  
Member of Congress

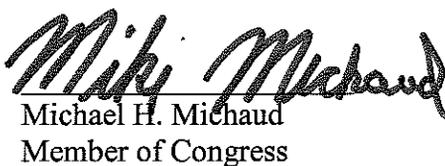
  
Bill Pascrell, Jr.  
Member of Congress

  
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Janice D. Schakowsky  
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David Wu  
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Jerrold Nadler  
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Michael H. Michaud  
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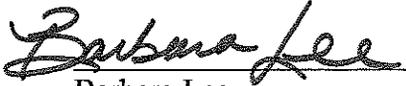
  
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Brad Sherman  
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Mike Thompson  
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Barbara Lee  
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Bob Filner  
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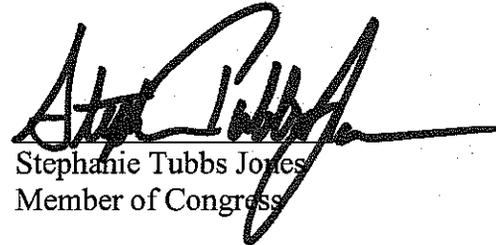
Eleanor Holmes Norton  
Member of Congress



Rush D. Holt  
Member of Congress



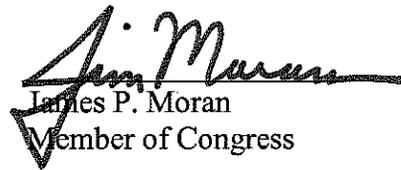
Earl Blumenauer  
Member of Congress



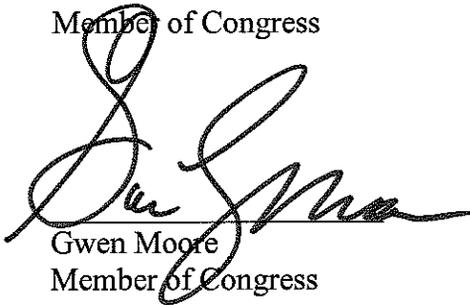
Stephanie Tubbs Jones  
Member of Congress



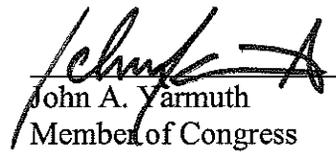
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Susan A. Davis  
Susan A. Davis  
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Nancy E. Boyda  
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Joe Courtney  
Joe Courtney  
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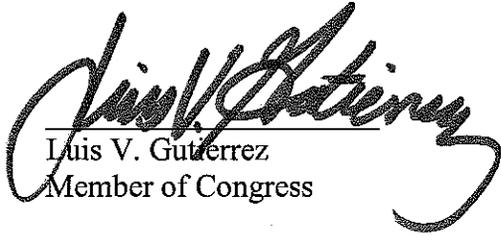
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Member of Congress

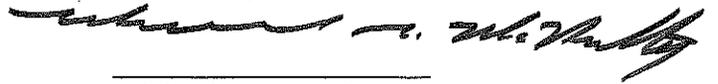
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Mazie K. Hirono  
Member of Congress

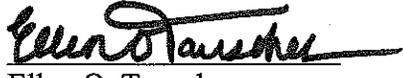
Neil Abercrombie  
Neil Abercrombie  
Member of Congress

Robert C. 'Bobby' Scott  
Robert C. 'Bobby' Scott  
Member of Congress

Howard L. Berman  
Howard L. Berman  
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Luis V. Gutierrez  
Member of Congress

  
Michael R. McNulty  
Member of Congress

  
Ellen O. Tauscher  
Member of Congress

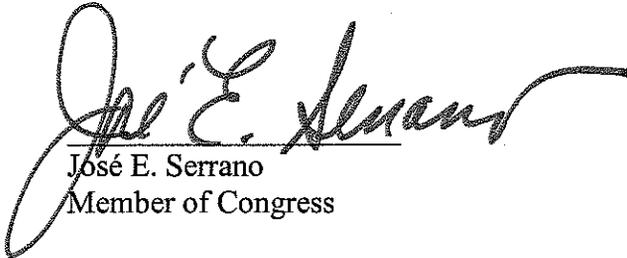
  
Gary L. Ackerman  
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Allyson Y. Schwartz  
Member of Congress

  
Lois Capps  
Member of Congress

  
Lucille Roybal-Allard  
Member of Congress

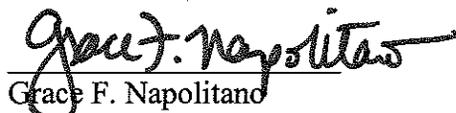
  
Mark Udall  
Member of Congress

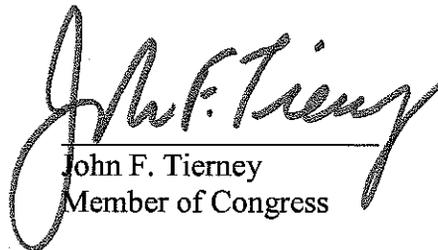
  
José E. Serrano  
Member of Congress

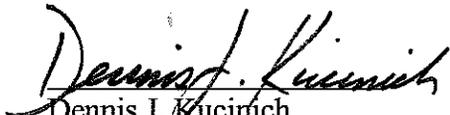
  
Sam Farr  
Member of Congress

  
Albert Russell Wynn  
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Doris O. Matsui  
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Grace F. Napolitano  
Member of Congress

  
John F. Tierney  
Member of Congress

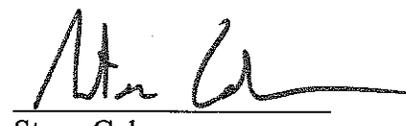
  
Dennis J. Kucinich  
Member of Congress

  
William J. Jefferson  
Member of Congress

  
Albio Sires  
Member of Congress

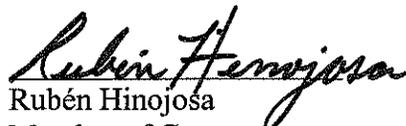
  
Carol Shea-Porter  
Member of Congress

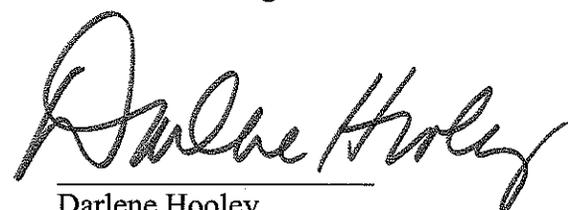
  
Keith Ellison  
Member of Congress

  
Steve Cohen  
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David Loebsack  
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Lynn C. Woolsey  
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Rubén Hinojosa  
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