AMWA Opposes PRO Act Due to Flawed “ABC Test”

On March 9, 2021, the U.S. House of Representatives voted 225-206 to pass H.R. 842, the Protecting the Right to Organize (PRO) Act. The bill is headed for a Senate vote next, and if enacted into law, could disrupt how self-employed writers and editors do business in the future. AMWA opposes legislation that negatively affects the livelihood of freelance medical communicators.

What You Can Do

*Call and write your US senators and urge them to vote against the PRO Act or redraft the legislation by deleting the ABC test and using the IRS standard instead.*

Background Information

Medical communicators working as independent contractors (freelancers) bring their knowledge and expertise to a broad range of clients. Freelancers include working parents, people with disabilities, small business owners, those nearing retirement, and people who otherwise need or prefer the flexibility of managing their own schedules while generating income in their chosen profession.

The PRO Act would put into effect changes to the National Labor Relations Act (NLRA) that would limit workers’ ability to be classified as independent contractors. This would occur via implementation of the “ABC Test” definition of an employee, whereas an individual must be classified as an employee unless: “(A) the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact; (B) the service is performed outside the usual course of the business of the employer; and (C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.”

The requirement of part “B” of the test stating that an independent contractor “performs work that is outside the usual course of the hiring entity’s business” is inappropriately restrictive. Many freelance medical communicators perform work that is aligned with a company’s core business, either because the independent contractor brings a unique expertise or because the company has a transient overflow of work. These opportunities benefit both parties. The ABC Test would create numerous issues for hiring contractors like the problematic new California labor law passed through Assembly Bill 5 (AB 5). The impact of that legislation was that many companies canceled contracts instead of hiring their contractors.

AMWA supports the removal of the ABC Test from the PRO Act and urges the continuation of the use of the IRS standard to determine whether a worker is misclassified as an employee. The current IRS standard — “*The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work, not what will be done and how it will be done*” — allows independent contractors to work in the same industry as their clients.