

October 21, 2009

The Honorable Patrick Leahy, Chair
Committee on Judiciary
United States Senate
Washington, DC 20510

The Honorable John Conyers, Jr., Chair
Committee on Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Messrs. Chairmen:

We are writing today on behalf of state insurance regulators and the National Association of Insurance Commissioners to express our appreciation for your recent hearings on anti-trust issues in the health insurance and medical malpractice markets. The potential for bid rigging, price fixing and market allocation is of great concern to state insurance regulators and we share your view that such practices are harmful to consumers and cannot be tolerated. However, we want to assure you that these activities are not permitted under the McCarran-Ferguson Act and are not tolerated under state law. Indeed, state insurance regulators actively enforce prohibitions in these areas.

We are concerned about statements made at the hearings that seemed to imply that collusion among health insurance or among medical malpractice companies is permitted under state law and that the McCarran-Ferguson Act somehow protects these practices. This is not true. The McCarran-Ferguson antitrust exemption for insurance does not allow or encourage conspiratorial behavior, as some have characterized it. The exemption simply leaves oversight of insurance, including health insurance and medical malpractice insurance, to the states and, as stated earlier, state laws do not allow collusion.

We know there are persuasive arguments that there is a lack of competition in some states, with few insurance companies competing against one another. Such a situation normally raises serious anti-trust concerns. However, insurance companies are different than other businesses in terms of current state oversight. The rates insurance companies charge are typically reviewed by the insurance commissioners, which is very different from other business sectors. If an insurance rate is not justified by claims experience, it is not permitted. As to other business sectors, they set their rates without any oversight.

Under McCarran-Ferguson, state regulation of insurance has proven effective and beneficial for consumers. State regulators are more familiar with the activities of the insurance companies they license and are closer to the consumers. They better understand the state-based markets and have the resources to conduct investigations should the need arise. Insurance regulators across the country have the authority to review rates and market conduct and they constantly monitor insurance company practices to ensure state laws are followed and consumers are protected.

The notion that McCarran-Ferguson in any way encourages collusion or is the cause of high health insurance and medical malpractice premiums is not supported by the facts. However, we agree that state and federal regulators and legislators must remain vigilant to protect consumers against price fixing, bid rigging, market allocation, or other methods carriers may attempt to use to gain an advantage in the marketplace. State insurance regulators and the NAIC often work closely with federal officials to identify and prevent illegal activities and we are confident that cooperation will continue.

While we cannot support amending McCarran-Ferguson, we do support your goal of reducing the cost of health care in this country and also assuring that we have fair and competitive insurance markets across the country. State regulators and the NAIC offer our expertise to assist you in attaining these important goals.

Sincerely,



Roger Sevigny
New Hampshire Insurance Commissioner
President, National Association of Insurance Commissioners

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