



October 20, 2009

The Honorable John Conyers Jr.
Chairman, House Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Chairman Conyers:

The Consumer Federation of America¹, Public Citizen², Center for Justice & Democracy³, and U.S. PIRG⁴ write to express our strong support for H.R. 3596, the “Health Insurance Industry Antitrust Enforcement Act.” This legislation would repeal the federal antitrust exemption for health insurance and medical malpractice insurers. These companies would be required to play by the same rules of competition as virtually all other commercial enterprises operating in America’s economy. Revoking the federal anti-trust exemption for health and medical malpractice insurers is a good first step towards full repeal of the McCarran Ferguson Act for all lines of insurance, which our organizations strongly support. The Consumer Federation of America estimates that if the McCarran Ferguson Act was fully repealed, Americans would save at least 10 percent of premiums or as much as \$50 billion a year.

Collusive activity in the health insurance industry is a significant problem. For example, health insurers have collaborated in artificially lowering the “reasonable and customary” amounts paid to doctors and hospitals for providing health services. If a patient uses an out-of-network doctor, the insurer typically pays a percentage, normally about 75 percent of the “reasonable and customary” doctor charge for the area of the country in which the procedure was done. Anything over this limit is left for the consumer to pay.

As the *New York Times* said in an editorial dated January 17, 2009, “the rub comes in defining what is reasonable and customary.” The editorial describes how this key factor has been

¹ The Consumer Federation of America is a nonprofit association of over 280 pro-consumer groups, with a combined membership of 50 million people. CFA was founded in 1968 to advance consumers’ interests through advocacy and education.

² Public Citizen is a national non-profit organization that represents the interests of consumers and the public in matters before state legislatures, the courts, executive branch agencies, and Congress.

³ Center for Justice & Democracy is a national consumer organization that works to educate the public about the importance of the civil justice system.

⁴ The U.S. Public Interest Research Group serves as the federation of and federal advocacy office for the state PIRGs, which are non-profit, non-partisan public interest advocacy groups that take on powerful interests on behalf of their members.

calculated by a firm called Ingenix, “which conveniently is owned by United Health. The whole system is rendered suspect by an obvious conflict-of-interest: If Ingenix pegs the customary rates low, it keeps insurance reimbursements low and shifts more of the costs to the patient.”

New York Attorney General Andrew Cuomo has found that most health insurers used the Ingenix schedules of reasonable and customary charges, including UnitedHealth, Aetna, Cigna and Wellpoint. Not only did this anti-competitive practice lead to higher out-of-pocket costs for consumer overall, it also affected their individual ability to comparison shop. For consumers the Ingenix system was a “black box” into which they could not see before selecting a doctor, to tell them what would be paid by the insurer.

Medical malpractice insurers also take advantage of the antitrust exemption to maximize their profits, to the detriment of the doctors and who buy their coverage. Insurer-supported “rate bureaus” like the Insurance Services Organization help insurers to collude in setting rates during the “soft” part of the insurance business cycle, when companies tent to under-price their policies, as well as in “hard” markets when insurers sharply increase premiums and reduce coverage for physicians. It is during hard markets that insurers often incorrectly claim that there is a liability insurance “crisis” caused by “out-of-control” litigation, when, in fact, insurers have caused the crisis themselves.

If antitrust law applied to the insurance industry, the economic cycle’s amplitudes would be reduced and the periodic crises would be at least partially mitigated. In particular, insurers would not be able to collude in increasing rates too much during hard markets. They would likely be much more careful about increasing rates, because they would be less certain that other companies would not undercut their prices.

Millions of consumers and their health care providers would benefit if real competition were restored in the health insurance and medical malpractice insurance markets. Cost savings for some lines of insurance, including medical malpractice coverage, could reach twenty percent or more. We strongly support passage of this important legislation.

Sincerely,

J. Robert Hunter
Director of Insurance
Consumer Federation of America

David Arkuch
Director
Public Citizen’s Congress Watch

Joanne Doroshow
Executive Director
Center for Democracy and Justice

Ed Mierzwinski
Director, Consumer Programs
U.S. PIRG

cc: Anant Raut
Counsel, Committee on the Judiciary