

Karen Ignagni
President &
Chief Executive Officer



October 8, 2009

HAND DELIVERED

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable John Conyers
Chairman
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Leahy and Chairman Conyers:

On behalf of America's Health Insurance Plans ("AHIP") and its member companies, we are writing regarding S. 1681 and H.R. 3596, both of which propose to repeal portions of the McCarran-Ferguson Act as they apply to health insurance plans and medical malpractice insurers.

In our view, the two bills under consideration may be based on a misperception of the scope and impact of the McCarran-Ferguson Act on health insurers. The Act does not preclude regulation of insurers but, instead, recognizes that the states play a central role in conducting oversight of health and other insurers. Indeed, the Congressional Research Service (CRS) recently noted that "[t]he McCarran-Ferguson Act prohibits the application of the antitrust laws and similar provisions of the FTC Act to the 'business of insurance' to the extent that it is regulated by state law."¹ In fact, health insurance is one of the most significantly regulated areas of the economy.

CRS also noted that "[t]he scope of the term 'business of insurance' has been narrowly construed by the Supreme Court to include only those activities involving the underwriting and spreading of insurance risk and the insurance companies' relationships with their policy holders." Given this narrow scope, it is inaccurate to describe the exemption as permitting anticompetitive conduct or mergers. CRS noted that "[t]he federal antitrust laws and FTC Act probably still

apply to all other activities of insurance companies, including their attempts to merge and some of their negotiated agreements because the McCarran-Ferguson exemption is for the ‘business of insurance,’ not the ‘business of insurers.’”

More generally, AHIP and our members stand on the side both of competition and of meaningful reform. We believe that the federal antitrust enforcement agencies can and do play a meaningful role in making health care markets more competitive, and we encourage initiatives to make them more effective in their missions. Similarly, we have endorsed comprehensive reform proposals for expanding coverage, improving quality, and slowing the growth rate of health care costs.

Thank you for your consideration of our thoughts on this issue. We would be happy to continue to discuss this and other issues with you.

Sincerely,



Karen Ignagni
President and CEO

Cc: The Honorable Jeff Sessions, Ranking Member, Committee on the Judiciary, United States Senate
The Honorable Lamar Smith, Ranking Member, Committee on the Judiciary, United States House of Representatives

ⁱ Congressional Research Service, Health Care Reform: Selected Antitrust Considerations (Aug. 31, 2009)