

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
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Ranking Member, Judiciary Committee

"Examining Competition in Group Health Care"

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This hearing on health care provider and insurance issues is important, but only if it is a first step towards actually doing something about our health care system. The United States spends more per capita on health care than other developed countries. Yet last year 46.6 million people in the United States had no health insurance and the percentage of people covered by employment-based plans dropped for the fifth consecutive year. Just yesterday, The Washington Post reported that the number of children without health coverage was increasing; about 8.3 million children - more than 11 percent -- had no health care coverage in 2005, up from 10.8 percent from 2004. This is simply unconscionable. In my home state of Vermont, we have implemented programs to try to combat this problem, and Vermont has been a leader in providing health care to children through the Dr. Dynasaur program that helps cover the costs of doctor visits, prescriptions, dental care, and hospital care among other services. But there is more to be done, and many other states lack such programs. Congress must do a better job of understanding the health care provider and health care insurance markets, and taking aggressive steps to ensure quality treatment is more accessible.

There is little disagreement that the health insurance industry is an increasingly concentrated one. The American Medical Association asserts that the market for HMOs and PPOs is "highly concentrated" in 99 percent of markets around the country. Concentration does not necessarily equal market power, and it does not necessarily mean the Justice Department should have prevented consolidation.

I have long been a proponent of competition among insurers, and indeed I am the principal sponsor of the Medical Malpractice Insurance Antitrust Act of 2005, which would remove the malpractice insurers' antitrust exemption for the most egregious kinds of anticompetitive behavior. This bill is narrow, focusing only on a segment of the health care system with particularly difficult problems. But were Congress truly committed to assisting health care consumers, we would enact not only this bill. We would eliminate the antitrust exemption for insurers entirely. Then, even were our federal enforcers to abdicate their responsibilities to the public, state authorities could step in to protect consumers. The response we should make to insurers with market power, and with immunity from antitrust prosecution, is not to arm the

physicians with similar exemptions and power. The response should be to strip the insurers of those protections, and make them obey the rules of competition.

But a concentrated market does reduce competition and puts control in the hands of only a few powerful players. Consumers - in this case patients - are ultimately the ones who suffer from this concentration. As consumers of health care services, we suffer in the form of higher prices and fewer choices. This Committee, and this Congress, would be serving Americans better by working to ensure competition both in the purchase of services from health care providers and in the sale of insurance to employer groups.

The AMA asserts that the answer to the insurance industry's increased market share is to give physicians more market power. The voice left unheard in negotiations between big health insurance companies and physicians permitted to collude would be the consumer's.

To be sure, health care providers operate under an ethical obligation to deliver quality care. The recent Federal Trade Commission and Department of Justice report on improving health care noted, however, that providers' financial incentives do not directly promote performance goals. Needless to say, that is not good for patients.

Ultimately, the objective of this hearing, and any congressional action, should be to promote more, affordable, quality health care choices for consumers. If the insurance industry is consolidating to the point where insurance companies can exercise market power, the government's role is to address that concentration - not add to the problem by creating market power on the other side, leaving consumers out of the equation.

The Department of Justice and Federal Trade Commission should be vigorously enforcing the antitrust laws not just against physician groups, as it has, but against insurance companies engaging in anticompetitive behavior. They should be just as diligent in detecting and prosecuting fraud in the health care system, which costs American taxpayers billions of dollars a year, and deprives American patients of the quality health care they deserve.