

Statement of

The Honorable Sheldon Whitehouse

United States Senator
Rhode Island
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Thank you, Mr. Chairman. I am a firm believer in the principles underlying our antitrust statutes, and I value the efforts of the Federal Trade Commission to shield consumers from the harm that anti-competitive behavior inflicts. Americans have a right to be protected from market distortions caused by illegal cartels, price fixing, anti-competitive mergers, and other abuses.

In some areas of the health care arena, however, antitrust laws distort an already imbalanced marketplace, and aid the immense corporation at the expense of the individual provider. While the nation has seen health insurers and managed care organizations bank record profits, impose huge premium increases, and enter into over 400 mergers in the past ten years, the FTC has been busy with roughly 28 actions against physician entities for anticompetitive conduct since 2002. Ironically, physicians, arguably the least consolidated component of the health care industry, are most constrained by antitrust concerns.

The problem is this: a giant health insurer, by operating within its huge corporate structure, can strategize to control physicians' fees with impunity under antitrust laws. But when even a few doctors engage in a parallel discussion to try to defend against such practices, they quickly risk an antitrust violation simply because they lack an equivalent overarching corporate structure. This unbalanced treatment of the provider community is an unintended consequence of our antitrust laws, with pernicious health care effects.

We must revisit the application of antitrust laws in the health care sector, because this sector is fundamentally different than other private sector markets regulated by the FTC. In the health care system, it is only through collaborative efforts that we can enhance quality of care, facilitate information exchange, and control costs. Individual providers cannot effectively and efficiently make these advances on their own. Even David Wales, Deputy Director of the FTC's Bureau of Competition, when before this Committee on September 6, 2006, acknowledged that joint conduct by physicians is not, by definition, anti-competitive.

Currently, the FTC allows physician cooperation in only two ways: financial integration with risk-sharing agreements, or through clinical integration. This standard is too limited. It hurts providers, it hurts patients, and it hurts the system as a whole. I look forward to working with you, Mr. Chairman, and all my colleagues on the Committee, to make the health care marketplace fairer for all involved parties.