

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
October 14, 2009

Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Hearing On "Prohibiting Price Fixing And Other Anticompetitive Conduct  
In The Health Insurance Industry"  
October 14, 2009

Today, we focus on an issue that has had my attention for many years -- the insurance industry's exemption from the Federal antitrust laws. This exemption, since it was enacted in 1945, has served the financial interests of the insurance industry at the expense of consumers.

For the past several months, our Nation has debated how best to reform our healthcare system. Three House Committees and two Senate Committees have spent countless hours trying to answer the question of how best to introduce competition and make health insurance affordable for all Americans. Amid this debate, it is important to remember that under current law the health insurance industry does not have to play by the same rules of competition as do other industries.

The lack of affordable health insurance plagues families throughout our country, and the rising prices that hospitals and doctors pay for medical malpractice insurance drains resources that could otherwise be used to improve patient care. Antitrust oversight in these industries would provide consumers with confidence that insurance companies are not colluding to raise prices artificially.

There is no justification for health insurers engaging in egregious anticompetitive conduct to the detriment of consumers. Price fixing, bid rigging and market allocation are "per se" violations of our laws precisely because there is no procompetitive justification for them. Health insurers should not be accorded immunity to engage in such otherwise illegal conduct. Our bill will fix this anachronism in the law once and for all and should lead to more competition and lower insurance costs.

The insurance industry has used its enormous influence to maintain a special, statutory exemption from Federal antitrust laws and the protections they provide. While the insurance industry hides behind its exemption, patients and doctors have continued paying artificially inflated prices, as costs continue to rise at an alarming rate. The cost spiral is just fine for insurance companies, but it punishes patients, American businesses large and small, and taxpayers. No wonder the insurance companies dearly want to keep their antitrust exemption. But where does an antitrust exemption fit into the picture at a time when we are debating reform efforts to check spiraling costs and expand Americans' access to quality, affordable health

insurance? The obvious answer is that it is an anachronism that does not fit into the picture of what the American people want and need their health insurance system to be.

Last month, I introduced the Health Insurance Industry Antitrust Enforcement Act of 2009, which will repeal the antitrust exemption for health insurance and medical malpractice insurance providers. The Majority Leader is a cosponsor of this legislation, as are six other Members of this Committee - Senators Feinstein, Feingold, Schumer, Durbin, Specter and Franken.

Our legislation will ensure that the basic rules of fair competition apply to insurers in the health industry, as part of the reforms that the larger healthcare bill will enact. Our Nation's antitrust laws exist to protect consumers, and it is vital that the health insurance companies are subject to these laws. These laws promote competition, which ensures that consumers will pay lower prices and receive more choices.

Last Congress, Senator Trent Lott, the former Senate Republican Leader, and others on both sides of the aisle joined me in introducing a much broader repeal of the insurance industry's antitrust exemption. The bill we have reintroduced this year is a scaled-back version directed at health insurance. Surely we can all agree that health insurers should not be permitted to fix prices, allocate markets, or to rig a bid.

Insurers should not object to being subject to the same antitrust laws as everyone else. If they are operating in an appropriate way, they should have nothing to fear. It is time for Congress to stick up for consumers, rather than roll over for the insurance industry.

I feel strongly that we need a public insurance option as part of our health care reform package. I agree with President Obama that a public insurance option would provide competitive pressure on private health care insurers and should have the effect of lowering prices. I also think we need to strengthen our anti-fraud laws and enforcement in connection with health care. However Senators feel about those matters, the initiative we are considering today - eliminating the health insurance industry's immunity from Federal antitrust laws -- should move forward as a key element of health care reform. I intend to work with the Senate Majority Leader to provide the opportunity for all Senators to vote against price fixing and market allocation and bid rigging and for fair competition among health insurers.

American families, doctors and hospitals rely on insurance. It is important to ensure that the prices they pay for this insurance are established in a fair and competitive way.

# # # # #