



Congress of the United States House of Representatives

The Honorable Peter A. DeFazio
House Judiciary Committee Member Day Hearing
September 20, 2019

PLEASE RESPOND TO:

- 2134 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3704
(202) 225-6416
- 405 EAST 8TH AVENUE, #2030
EUGENE, OR 97401
(541) 465-6732
1-800-944-9603
- 125 CENTRAL AVENUE, #350
COOS BAY, OR 97420
(541) 269-2609
- 612 SE JACKSON STREET, #9
ROSEBURG, OR 97470
(541) 440-3523
- defazio.house.gov

Chairman Nadler and Ranking Member Collins:

Thank you for the opportunity to submit testimony as part of the Committee's Member Day hearing. I request that the Committee advance my bipartisan legislation, H.R. 1418, the Competitive Health Insurance Reform Act of 2019, which I introduced with my colleague Representative Paul Gosar. This important legislation would protect consumers from anti-competitive practices by repealing the outdated antitrust exemption for the health insurance industry.

It is crucial to note that H.R. 1418 has wide bipartisan appeal, as well as a strong history of near-unanimous congressional consensus. In fact, legislation identical to H.R. 1418 passed the Republican-led House of Representatives in March 2017 by an overwhelming 416-7 vote. Likewise, in February 2010, at the height of the health care reform debate, and only one month before the Affordable Care Act was signed into law, similar legislation passed the Democratic-led House by a 406-19 vote.

This legislation also enjoys bipartisan Senate support, as Senators Steve Daines and Patrick Leahy have introduced identical legislation, S. 350. This marks the first time that identical, bipartisan legislation to repeal the antitrust exemption for the health insurance industry has been introduced in both chambers of Congress.

As you may know, in 1944 the U.S. Supreme Court ruled in *United States v. Southeastern Underwriters* that the business of insurance was a form of interstate commerce. This meant that the health insurance industry would be subject to federal antitrust laws and congressional oversight under the Commerce Clause of the Constitution.

Seeing that their industry would be subject to fair competition laws, the insurance industry lobbied Congress to create a special-interest loophole for themselves. This resulted in the McCarran-Ferguson Act, passed in 1945, which exempted the business of insurance from federal antitrust laws.

Fast-forward to the realities of the health insurance industry today, and it is clear that the McCarran-Ferguson Act has not aged well. In today's market, this antiquated exemption has given health insurance companies the power to collude to drive up prices, limit competition, conspire to underpay doctors and hospitals, and price-gouge consumers. The large health insurance companies of today have taken advantage of this exemption to abuse the market and artificially inflate health care costs, meaning consumers are paying higher and higher prices to get the basic health care services they need. This is absurd.

Moreover, any argument by big health insurers persuading that they should continue to be exempt from federal antitrust laws is undercut by the fact that they are one of the only industries to have this exemption. For example, Major League Baseball and a handful of other niche industries have such an exemption. Whatever the merits of antitrust exemptions for these niche industries may be, the health insurance industry today is clearly not niche, and it should be subject to federal antitrust laws just like virtually every other industry.

My legislation, the Competitive Health Insurance Reform Act, would repeal this anachronistic antitrust exemption and give the Department of Justice and the Federal Trade Commission the authority to apply antitrust laws to anti-competitive behavior in the health insurance industry. Specifically, my legislation would authorize greater federal antitrust enforcement in instances where state regulators fail to or cannot act.

My legislation has been endorsed by numerous consumer protection organizations, medical providers, and other stakeholders, including: *Consumer Reports, Consumer Federation of America, Consumer Action, American Dental Association, American Hospital Association, American Student Dental Association, Academy of General Dentistry, American Association of Women Dentists, American Academy of Pediatric Dentistry, American Academy of Oral & Maxillofacial Pathology, American Association of Oral and Maxillofacial Surgeons, American Optometric Association, American College of Surgeons, American Association of Endodontists, American Academy of Periodontology, American Academy of Neurology, American Association of Orthopaedic Surgeons, National Community Pharmacists Association, American Dental Education Association, American Association of Orthodontists, American Association of Neurological Surgeons, Congress of Neurological Surgeons, American College of Emergency Physicians.*

It is past time for Congress to rein in skyrocketing health care costs and ensure consumer protections are in place to guard against anti-competitive behavior in the health insurance industry. We are in an ideal position – perhaps more so than ever before – to move this bipartisan legislation forward in both the House and the Senate and finally eliminate this outdated antitrust exemption.

Considering similar bills have passed overwhelmingly in both Democratic and Republican majorities, I urge the Committee to report my legislation as soon as possible and allow it to come to the House floor. H.R. 1418 will restore full transparency, promote oversight, and encourage competition within the health insurance industry. Thank you for your time today and for your attention to this matter.