



## ANTITRUST ISSUES IN HEALTH CARE

### RECOMMENDATION

The AAFP believes that holding the business of insurance to the same standard as other industries could promote genuine competition and improve the nation's health care system. We call on the Congress and the U.S. Department of Justice to investigate long term consequences of health insurance market consolidation. We encourage the Congress to enact legislation to ease Federal Trade Commission restrictions on primary care physicians' contract negotiations with third party payers to enable them to negotiate contracts with insurers on a level playing field.

### Recent Congressional Action

On February 24, 2010, the House of Representatives passed the *Health Insurance Industry Fair Competition Act* (HR 4626) to end the 65-year-old antitrust exemption for health insurance industry by amending the *McCarran-Ferguson Act* on a bipartisan vote of 406 to 19. The House-passed bill would require that antitrust laws be enforced on the business of health insurance. It also imposes Federal Trade Commission Act prohibitions against using unfair methods of competition shall apply to health insurance businesses whether they are for profit or not.

Senate Judiciary Committee Chairman Pat Leahy (D-VT) introduced the *Health Insurance Industry Antitrust Enforcement Act* (S 681) last September. Chairman Leahy has indicated his commitment to move forward on his bill to declare that nothing in the *McCarran-Ferguson Act* shall be construed to permit health insurance issuers or issuers of medical malpractice insurance to engage in any form of anticompetitive behavior. Prohibited behavior would include such practices as price fixing, bid rigging, or market allocations in connection with providing health insurance coverage or coverage for medical malpractice claims or actions.

### AMA Study Finds Harm in Health Insurance Market Consolidation

The American Medical Association (AMA) found that in a majority of metropolitan statistical areas across the nation, a single health insurer dominates the market. Competition is undermined in dominated markets, ultimately harming the consumers of health care—the patients. The sixth edition (2007-2009) of the AMA publication *Competition in Health Insurance: A Comprehensive Study of US Markets* concluded that, "it is time to re-examine the legal landscape that has resulted in unfettered consolidation of health insurance markets."

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### **Health Insurance Profits Grow with Higher Premiums, Deductible, Co-Pays**

Since 2000, large health insurers have posted significant profits. In reporting that profits at the nation's health and life insurers rose 29 percent in 2004, the third year in a row of group health profits increases. These earnings increases were driven by increasing premiums. While consumers are paying ever-increasing health insurance premiums without a corresponding increase in benefits, their deductibles, co-payments and co-insurance costs have also gone up.

The Kaiser Family Foundation's Employer Health Benefits 2006 found that between spring of 2005 and spring of 2006, premiums for employer-sponsored health insurance rose by 7.7 percent, a slower rate than the 9.2 percent increase in 2005 and 11.2 percent increase in 2004. Despite this slowdown, premiums continued to increase much faster than overall inflation (3.5 percent) and wage gains (3.8 percent). Premiums for family coverage have increased by 87 percent since 2000.

### **Physicians Lack Bargaining Power with Health Insurers**

Market concentration gives health insurers excessive power in determining the conditions of coverage, payment and practice. As James D. King, MD, FAAFP, then-President of the American Academy of Family Physicians, testified to the House Committee on Small Business in October 2007, physicians in independent practice are prohibited from engaging in collective bargaining which prevents them from effectively negotiating the terms of health plan participation agreements. The choice, then, for physician practices in this situation is either to accept a "take-it-or-leave-it" contract that threatens their financial viability or refuse patients covered by that plan. In either case, many patients, especially in rural and underserved areas will find it increasingly difficult to locate a primary care physician.

### **Health Insurance Market Consolidation Expected to Continue**

It is clear that the country's largest health insurers intend to continue their aggressive acquisition efforts. Health plans may continue to use the negotiating power created by consolidations to dictate smaller payments and onerous terms such as un-reimbursed administrative responsibilities.