



June 4, 2019

The Honorable Lindsey Graham  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Dianne Feinstein  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Graham and Ranking Member Feinstein:

The undersigned organizations urge your support for S. 350, the “Competitive Health Insurance Reform Act of 2019.” This bipartisan legislation would remove the ill-conceived antitrust exemption as it applies to health insurance,<sup>1</sup> thus bringing consumers the benefits of competition under the antitrust laws, in the way health insurance is offered, marketed, and sold.

The rules of competition apply to every other part of the healthcare system; health insurance is an aberration. The antitrust laws are a key to making sure that the marketplace works for consumers, and the insurance industry should not be left out.

Congress created this antitrust exemption almost by accident, in the midst of the Second World War – when attentions were directed elsewhere – in the wake of a Supreme Court decision clarifying that the antitrust laws did apply to insurance. It started out to be a temporary three-year breathing spell, to allow insurers to familiarize themselves with the antitrust laws and adjust their practices to the accepted rules of competition. Instead, a few poorly-understood words added in conference committee turned the temporary delay into an unintended exemption from those rules.<sup>2</sup>

It is long since time to correct that error. Among other experts who have called for doing so, the Antitrust Modernization Commission, established in 2002 by bipartisan legislation approved in this Committee, singled out this exemption for particular skepticism as to any justification for it. Ultimately, this exemption should be removed for all insurance; but focusing on health insurance now is a logical and important positive step to take at this time.

---

<sup>1</sup> The bill would provide “safe harbors” for carefully defined activities that do not create antitrust concerns..

<sup>2</sup> See Insurance Competitive Pricing Act, H.R. Rept. No. 102-1036, at 17-28 (1992).

Consumers will benefit from having competition rules in force at all levels in the healthcare supply chain, including insurance. Even the best regulatory framework works better where competition gives businesses a market-driven incentive to want to improve service while holding down prices and providing better value. Regulation and competition both work best when they can work hand in hand.

As the healthcare marketplace evolves, having the antitrust laws apply will give health insurers competition-based incentives to improve the way they provide coverage to consumers, with higher quality, better choice, and more affordability. Better competition will help bring insurer incentives better in line with benefiting consumers.

Specifically, as the Justice Department has explained, where there is effective competition, coupled with transparency, in a consumer-friendly regulatory framework, insurers will be spurred to compete against each other by offering plans with lower premiums, reducing copayments, lowering or eliminating deductibles, lowering annual out-of-pocket maximum costs, managing care, improving drug coverage, offering desirable benefits, and making their provider networks more attractive to potential members.<sup>3</sup>

Competition will be beneficial to consumers in the health insurance marketplace just as elsewhere in our economy.

We look forward to working with you to see this important consumer legislation enacted into law.

Respectfully,

George P. Slover  
Senior Policy Counsel  
Consumer Reports

J. Robert Hunter  
Director of Insurance  
Consumer Federation  
of America

Ken McEldowney  
Executive Director  
Consumer Action

Cc: Members, Committee on the Judiciary  
Hon. Steve Daines  
Hon. Patrick Leahy

---

<sup>3</sup> See, e.g., Competitive Impact Statement, *United States v. Humana, Inc. and Arcadian Management Services, Inc.*, No. 12-cv-464 (D.D.C., March 27, 2012), at 8, available at <https://www.justice.gov/atr/case-document/file/499056/download>.