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## **PIAA Statement On Consumer Groups' Analysis of McCarran-Ferguson Repeal**

**Rockville, MD – October 30, 2009** – In response to recent claims by several consumer groups that the Health Insurance Industry Antitrust Enforcement Act (H.R. 3596) would result in, among other things, a 20 percent savings for doctors, Lawrence E. Smarr, president of the Physician Insurers Association of America (PIAA), issued the following statement:

“A recent analysis of the Health Insurance Industry Antitrust Enforcement Act of 2009 (H.R. 3596 and, by extension, its companion bill, S. 1681) by the Congressional Budget Office (CBO) has revealed that this legislation is in essence a politically motivated attempt to appease personal injury lawyers via a spurious bill.

Advocates for repealing the McCarran-Ferguson Act antitrust exemption for medical professional liability (MPL) insurers have made unsubstantiated claims of “price gouging” by the MPL insurance industry (ignoring the fact that the majority of doctors in the U.S. are insured by companies they own and/or operate—thus if they were “price gouging” they would be gouging themselves). McCarran-Ferguson opponents hail S. 1681/H.R. 3596 as the “silver bullet” for rising MPL premiums. If the government was able to prosecute allegations of “price fixing, bid rigging, or market allocations” within the MPL insurance industry, as the bill would allow, they claim premiums would fall 20 percent.

The CBO, however, views this legislation very differently. It noted, accurately, that MPL insurers are not engaged in any noncompetitive behaviors, and if they were they could already be prosecuted for such conduct, because, “states already bar the activities that would be prohibited under federal law if this bill was enacted.” The CBO report went on to say that, in fact, “enacting the legislation would have no significant effect on the premiums that private insurers charge.”

The CBO report hinges on one very important detail—a cogent definition of the prohibited activities. If normal definitions of “price fixing, bid rigging, or market allocations,” are used, reason would dictate that such practices should be prosecuted (which is why states already prohibit such activities). If, however, regulators are given leeway to use makeshift definitions of the aforementioned terms (currently, the terms are completely undefined in the bill), that could lead to a proliferation of litigation against MPL insurers that are merely using legitimate data and methodologies for pricing their product. Thus, the lack of definition within the bills means there could be a major increase in legal expenses for MPL insurers, unforeseen by the CBO, which would eventually result in increased premiums for doctors, hospitals, and other healthcare providers—costs that would, in the end, get passed on to patients.

If the bill will have no effect on insurance industry practices, and could even lead to an increase in premiums for healthcare providers, why is Congress considering it? It may well be that this bill is essentially payback to the trial lawyers who have made large contributions to the campaigns of Congressional leaders and who have been alarmed to find that President Obama and others have suggested that medical liability reform should be included in the healthcare reform bill. They hope to scare insurers into abandoning efforts to reform a tort system that has allowed personal injury lawyers to reap large profits, while their clients take home a fraction of the settlements and awards they receive.

The CBO, on which Congressional leaders rely for unbiased analysis, has clearly stated that S. 1681 and H.R. 3596 will accomplish nothing. Congress should use that analysis to reject this legislation.”

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*The Physician Insurers Association of America (PIAA) is a leading insurer trade association, representing 70 domestic and international medical professional liability insurance companies owned and/or operated by physicians, hospitals, dentists, and other healthcare providers. PIAA domestic member companies include large national insurance companies, mid-size regional writers, single-state insurers, and specialty companies that serve specific healthcare-provider niche markets. Collectively, these companies provide insurance protection to more than 60% of America's private practice physicians, and write approximately 46% or \$5.2 billion of the total industry premium. PIAA international members provide indemnification and other services to more than 400,000 healthcare professionals around the world and operate in eight countries. For more information, visit [www.piaa.us](http://www.piaa.us).*