National Association of Insurance Commissioners
& The Center for Insurance Policy and Research

December 2, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, DC 20510

Senator Graham, Chair
Judiciary Committee
United States Senate
Washington, DC 20510

Senator Dianne Feinstein, Ranking Member
Judiciary Committee
United States Senate
Washington, DC 20510

Dear Majority Leader, Minority Leader, Mr. Chairman, and Madame Ranking Member:

We are writing on behalf of the members of the National Association of Insurance Commissioners[1] (NAIC) to express our grave and continuing concerns about the Competitive Health Insurance Reform Act of 2020, S. 350, which would amend the McCarran-Ferguson Act by eliminating the health insurance industry's exemption from federal antitrust and competition laws.

The premise of the Competitive Health Insurance Reform Act is that collusion among health insurance companies is permitted under state law and that the McCarran-Ferguson Act somehow currently protects these practices. This is not true. The McCarran-Ferguson antitrust exemption for health insurance does not allow or encourage conspiratorial behavior but simply leaves oversight of insurance, including health insurance, to the states - and state laws do not allow collusion.

The potential for bid rigging, price-fixing and market allocation is of great concern to state insurance regulators and we share your view that such practices would be harmful to consumers and should not be tolerated. However, we want to assure you that these activities are not permitted under state law. Indeed, the state insurance regulators in all states actively enforce their antitrust rules and review rates to ensure they are actuarially justified, sufficient for solvency and nondiscriminatory.

In short, existing state consumer protection, antitrust, and unfair trade practice laws provide the necessary tools needed to help stop anti-competitive conduct. Adding a layer of federal review would only lead to increased costs, confusion, and possible conflicts in federal and state courts.

In addition, though the Competitive Health Insurance Reform Act is a relatively short bill it would have far-reaching implications which must be taken into careful consideration. The law's limited exemption from federal antitrust rules allows insurers to share loss data, which promotes healthy insurance markets by increasing the level and competence of the competition. Advisory organizations collect statistical information from many insurers and provide compiled information on loss costs to all their members. This statistical information, in turn, allows small and medium-sized insurers to compete as those insurers do not generate sufficient business volume or claims data to predict the future loss costs of policies. Loss

costs published by advisory organizations are vital to effective policy pricing; without published loss costs, many insurers would be forced to limit policy offerings or even leave the business to the much larger insurers.

Contrary to the claims by the bill's proponents that the exemption was an "error" or an "oversight", the exemption from federal antitrust rules in McCarran-Ferguson was carefully considered and adopted for good reasons. These reasons still exist today, and the exemption should not be eliminated.

Finally, we note that eliminating the antitrust exemption in McCarran-Ferguson for health carriers will do nothing to address the real drivers of higher health insurance premiums: the cost of health care and utilization. In fact, as proposed, we believe the Competitive Health Insurance Reform Act would lead to higher administrative costs, more confusion and uncertainty, and more instability in the health insurance markets and, therefore, higher premiums. More competition is a laudable goal to give consumers more options and improve service, but premiums will not go down unless the underlying cost drivers are addressed.

While we cannot support amending or repealing the McCarran-Ferguson antitrust exemption for the business of health insurance, state regulators do support the goal of reducing the cost of health care in this country and also assuring that we have fair and competitive insurance markets across the country. We offer the expertise of state insurance regulators to assist you in attaining these important goals.

Sincerely,

Raymond G. Farmer
NAIC President
Director
South Carolina Department of Insurance

David Altmaier
NAIC President-Elect
Commissioner
Florida Office of Insurance Regulation

Dean L. Cameron
NAIC Vice President
Director
Idaho Department of Insurance

Chlora Lindley-Myers
NAIC Secretary-Treasurer
Director
Missouri Department of Commerce and Insurance

[1] Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.