



May 11, 2023

Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Dear Attorney General Garland and Chair Khan:

On behalf of NAIC's members—the chief insurance regulators in 50 states, the District of Columbia, and U.S. territories— we seek updates on the Federal Trade Commission's (FTC's) antitrust investigations into health insurance carriers, FTC's inquiry into the practices of Pharmacy Benefit Managers (PBMs), and FTC's efforts to address the improper marketing of health insurance plans.

As Congress debated amending the McCarran-Ferguson Act ("McCarran-Ferguson") to allow the FTC to investigate antitrust complaints against health insurers, the NAIC argued that "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." [NAIC Letter to Congress - December 2, 2020]

When Congress amended McCarran-Ferguson in 2020, the author of the legislative language, Senator Daines, and Senator Collins entered into a colloquy to "make clear Congress's intent that along with the changes specified in the bill, it is Congress's expectation that the Department of Justice and the Federal Trade Commission must notify State bureaus of insurance and attorneys general of any complaints or investigations they have received or are performing that involve entities in their state." [Congressional Record – December 29, 2020]


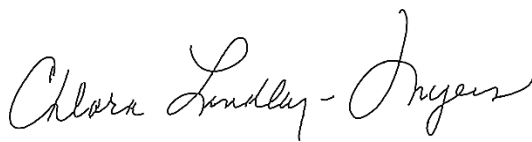
However, to date, no state regulators have reported any such notification from the Department of Justice or FTC. Insight into any anti-competitive behavior by our regulated entities and the impact that may have on consumers is vitally important to our work. With that in mind, please provide an update on any health insurer antitrust investigations, a list of which states may be impacted, and records of any notifications made to those states.

We would also like an update on the FTC's Section 6(b) study of the contracting practices of PBMs. States have become increasingly active in their oversight of PBMs with the passage of new laws and rules, especially following the *Rutledge* decision. The NAIC is currently in the process of developing a

White Paper on PBM practices and state regulations and would welcome a briefing by the FTC on their findings from their inquiry on the impact of vertically integrated PBMs on access and cost.

Finally, one of the NAIC's priorities is to protect consumers from misleading and inappropriate marketing practices. The NAIC has formed a Working Group so that state regulators can share information about such practices they have seen and coordinate responses. The Working Group has identified some entities that are using social media, robocalls, and other methods to market across state lines, and sometimes even across country borders. We request a meeting with FTC staff to discuss states' findings and the tools available to the FTC to help address this growing problem. Protecting consumers from abuse depends on close coordination between state and federal officials with the authorities to take action, so we thank you for your consideration and look forward to working with you on these important issues.

Sincerely,

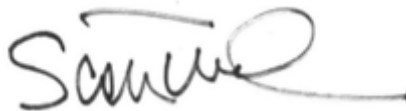


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