Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine

PRESIDENT: Rep. Matt Lehman, IN
VICE PRESIDENT: Asm. Ken Cooley, CA
TREASURER: Asm. Kevin Cahill, NY
SECRETARY: Rep. Joe Fischer, KY

IMMEDIATE PAST PRESIDENTS:
Sen. Jason Rapert, AR
Sen. Travis Holdman, IN

December 18, 2020

The Honorable Steve Daines
320 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Daines:

On behalf of the National Council of Insurance Legislators (NCOIL), we write to oppose efforts to repeal the federal antitrust exemption for health insurers, which would occur through the passage of The Competitive Health Insurance Reform Act of 2020 (H.R. 1418). Repealing the McCarran Ferguson Act's antitrust exemption for health insurers would ignore already existing State antitrust protections, reduce competition, and increase costs for consumers. Additionally, while H.R. 1418 has passed the House, the measure has not been taken up and discussed at all in the Senate. Therefore, including the measure in an omnibus spending bill or COVID-19 relief/stimulus package would be inappropriate and premature.

As a reminder, NCOIL is a national legislative organization with the nation's 50 states as members, represented principally by legislators serving on their states' insurance and financial institutions committees. NCOIL writes Model Laws in insurance and financial services, works to both preserve the state jurisdiction over insurance as established by the McCarran-Ferguson Act seventy-five years ago and to serve as an educational forum for public policy makers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making state policy when it comes to insurance and educate state legislators on current and perennial insurance issues.

The application of the McCarran-Ferguson federal antitrust exemption has worked well for decades to promote the largest, most competitive and innovative insurance marketplace in the world. This type of legislation would have a harmful impact on consumers and the insurance marketplace as a whole. Specifically, we the States' elected legislators who comprise NCOIL, believe that the antitrust exemption fosters competition and creates consumer choice by granting insurers the ability to share loss history and other information. Without loss history data, smaller and medium sized companies, which do not have the business volume to develop actuarially credible rating information, would be unable to compete with larger companies that are less

dependent on industry-wide data. Indeed, the absence of such data would have a chilling effect on the ability of smaller and medium sized insurers to expand into new markets or new product lines.

Also, despite the bill's alleged safe-harbors for data collection and sharing, NCOIL believes that numerous lawsuits challenging such insurer practices as violations of the federal antitrust laws are likely, and therefore, the uncertain risks of new litigation challenges and organizational change pressures resulting from the bill's enactment would produce offsetting costs.

Further, proponents of H.R. 1418 are mistaken in their beliefs that the bill would have any effect on the affordability and availability of health insurance premiums. First, the bill ignores the reality that every State has its own antitrust and unfair competition laws under which State regulators and Attorneys General have historically monitored, investigated, and punished insurers, agents, and brokers who have violated them. Health insurers' rates are also subject to rigorous actuarial review, and are not permitted unless justified.

In 2017, as part of the record involving H.R. 372,[1] House Report 115-36 recognized these realities when stating "[a]s a direct result of McCarran-Ferguson, every state has its own regulations and regulatory agency to protect consumers and competition in the insurance market. **These regulations include bans on the types of anticompetitive conduct by insurers that the Federal antitrust laws would reach if they applied**." (emphasis added). Accordingly, the antitrust exemption granted under the McCarran-Ferguson Act is not a loophole through which bad actors can avoid punishment. Existing State protections provide the necessary tools needed to stop anti-competitive conduct.

Second, in its cost estimate report on H.R. 372, the Congressional Budget Office (CBO) stated the bill's effect on health insurance premiums "would probably be quite small," and enacting the bill "would have no significant effect on the premiums that private insurers would charge for health or dental insurance." Therefore, as you can see, H.R. 1418 is simply the wrong solution in trying to solve the health insurance market's affordability and accessibility problems. In fact, it is not a solution, but rather legislation that would spawn additional problems through its unintended consequences.

Lastly, although H.R. 1418 applies only to health insurers, NCOIL's State insurance legislator members believe that the legislation sets an ominous precedent that would facilitate subsequent Congressional returns to this area with legislation repealing the McCarran-Ferguson federal antitrust exemption for other areas of insurance. Such action would be imprudent as it would disrupt the largest, most competitive and innovative insurance marketplace in the world. In fact, such efforts have previously been attempted as in 2017, an amendment to include medical malpractice insurance, a property casualty product, in H.R. 372 was introduced but ultimately defeated.

NCOIL understands why some believe the issues of consolidation and anti-competitiveness in the health insurance marketplace merit exploration, but H.R. 1418 is not the answer. As noted above, the unintended consequences of this legislation outweigh the intended consequences. As

[1] H.R. 372 is identical to H.R. 1418.

a proven bi-partisan group of accomplished, solutions-oriented legislators from around the country, we urge you to not advance this bill any further. We welcome the opportunity to discuss these issues with you.

With appreciation for your consideration, we are,

Very truly yours,

Representative Matt Lehman (IN)
NCOIL President

Assemblyman Ken Cooley (CA)
NCOIL Vice President

Assemblyman Kevin Cahill (NY)
NCOIL Treasurer

Representative Joe Fischer (KY)
NCOIL Secretary

Senator Travis Holdman (IN)
NCOIL Immediate Past President

Senator Jason Rapert (AR)
NCOIL Immediate Past President

Thomas B. Considine
NCOIL CEO