



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 23, 2020

The Honorable Russell Vought
Director
Office of Management and Budget
Washington, DC 20503

Dear Mr. Director:

This letter responds to your request for the views and recommendations of the Department of Justice (the Department) on H.R. 1418, the “Competitive Health Insurance Reform Act of 2020” (the “Bill”). The Bill, now enrolled, would limit the antitrust exemption under the McCarran-Ferguson Act by allowing the federal antitrust laws to apply to conduct within the “business of health insurance.” The Department recommends that the President support the Bill and sign it into law because American consumers deserve competition in health insurance markets just as they do in any other industry.

Under the McCarran-Ferguson Act, an activity is exempt from the federal antitrust laws if the activity (1) falls under the “business of insurance,” (2) is regulated by state law, and (3) the activity does not involve “an agreement to boycott, coerce, or intimidate.” This broadly written immunity has been interpreted to allow a range of harmful anticompetitive conduct in health insurance markets to occur unimpeded by the antitrust laws. The Bill would narrow the scope of the immunity, expanding the Department’s ability to investigate and prosecute conduct that harms American consumers.

The Department’s commitment to enforcement in this important area can be frustrated by parties who attempt to assert an impermissibly broad defense that their conduct is protected by the “business of insurance” exemption contained in the McCarran-Ferguson Act. The proposed amendment to the McCarran-Ferguson Act would assist the Department’s Antitrust Division in its mission to enforce the antitrust laws by narrowing this defense and clarifying that health insurers are subject to the same consumer-welfare test that applies in every other industry.

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Thank you for the opportunity to present our views. Please do not hesitate to contact this office if we may be of additional assistance to you.

Sincerely,



Mary Blanche Hankey
Acting Assistant Attorney General