Repeal of the McCarran-Ferguson Act Would Undermine States’ Authority and Harm Millions of Americans

With the McCarran-Ferguson Act, Congress determined that states’ regulation of the business of insurance is in the public interest, and therefore prevents federal laws of general application from undermining states’ regulations. This includes a narrow federal antitrust exemption for the business of insurance. For decades, the McCarran-Ferguson Act has been the law of the land, supporting the authority of states to regulate and administer insurance as they determine to be in the best interests of their residents and communities.

Legislative proposals that would repeal or amend antitrust-related portions of the McCarran-Ferguson Act would undermine states’ authority and harm Americans. Repeal of McCarran-Ferguson in general, or the antitrust exemption in particular, would do nothing to increase competition in health insurance markets; is not necessary to allow sales across state lines; and would harm millions of Americans by reducing competition, choice, and innovation.

- **The antitrust exemption is narrow and protects health insurance providers from both duplicative and conflicting oversight requirements. Repealing the exemption would dramatically increase administrative red tape and costs and would fail to promote competition in health care coverage.**
  - The McCarran-Ferguson exemption does not apply to many activities engaged in by health insurance providers. It only applies to the narrower set of activities that constitute “the business of insurance” only if they are “regulated by State law.” Thus, the Act does not leave health insurance providers without regulation. Rather, it ensures that they are not subject to duplicative, and undoubtedly at times conflicting, oversight.
  - Outside of the narrow exemption, a wide range of health insurance provider activities, including mergers and many types of business practices, remain subject to the federal antitrust laws and to enforcement by the Department of Justice.
  - Limited competition in markets is not because of McCarran-Ferguson. Other well-documented factors such as consolidated provider markets and regulatory barriers have been shown to result in limited competition in markets. In fact, in examining a McCarran repeal proposal in 2009, the Congressional Budget Office indicated that “whether premiums would decrease or increase from the proposal is difficult to determine, but in either case the magnitude of the effects is likely to be quite small.”

- **McCarran-Ferguson does not limit the application of state antitrust laws to health insurance providers.**
  - The McCarran-Ferguson Act applies only to federal antitrust law.
  - It is beyond dispute that health insurance providers are extensively regulated at the state level. All health insurance providers are subject to state antitrust laws, as well as to state rate regulation and other state insurance laws enforced by State Attorneys General and insurance regulators.
  - The National Association of Insurance Commissioners (NAIC) has stated that bid rigging, price fixing and market allocation “are not permitted under the McCarran-Ferguson Act and are not tolerated under state law. Indeed, state insurance regulators actively enforce prohibitions in these areas.”
Repeal of McCarran-Ferguson could have unintended consequences.

- Repeal would create legal and regulatory uncertainty, which could lead to higher costs and chill beneficial activities.
- For example, if McCarran-Ferguson were repealed, conduct that for years has been regulated and approved of by state insurance commissioners could be subject to challenge by private antitrust litigation, resulting in uncertain and therefore more unstable markets, higher health care costs for hardworking Americans. Repeal would also undermine the authority of states to take actions they have determined to be in the best interest of their residents.
- In addition, repeal could disrupt industry-wide initiatives to enhance efficiency, reduce costs, and improve the quality and safety of patient care. Health insurance markets are subject to many external disruptions, whether they result from legislative change or public health emergencies such as the current pandemic. Such disruptions highlight the potential benefit of activities that use data pooling and information sharing to benefit consumers and physicians. Legislation repealing McCarran Ferguson could chill programs to provide consumers with data-driven tools, administrative simplification projects, novel mechanisms to pool certain types of risk, and nimble approaches to approaching health and other crises.

Health insurance providers remain committed to providing every American with affordable, comprehensive coverage choices that allows them to select a product that best meets the needs of themselves and their families. There are many ways to improve affordability and competition in health insurance coverage markets. Repealing McCarran-Ferguson is not among them.