

Karen Ignagni  
President &  
Chief Executive Officer



October 21, 2009

The Honorable John Conyers  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
2138 Rayburn Building  
Washington, DC 20515

Dear Chairman Conyers:

On behalf of America's Health Insurance Plans ("AHIP") and our member companies, we are writing again regarding H.R. 3596 and S. 1681, both of which propose to repeal portions of the McCarran-Ferguson Act as they apply to health insurance plans and medical malpractice insurers.

As noted in our letter of October 8<sup>th</sup>, the bills under consideration may be based on a misperception of the scope and impact of the McCarran-Ferguson Act on health insurers. The narrow nature of the Act, as interpreted by courts, means that the types of anticompetitive activity contemplated by the bills already are subject to federal and state antitrust laws. We believe that health insurers have not been engaging in anticompetitive conduct and that McCarran-Ferguson does not provide a shield for such conduct. Thus, the bills attempt to remedy a problem that does not exist.

An additional concern is the increased regulatory and legal uncertainty that would result from such repeal. The McCarran-Ferguson Act entrusted states with the responsibility for the comprehensive regulation of the business of insurance. States have met this responsibility by regulating health insurance in every area. Indeed, there is no area of health insurance that is not regulated in a detailed manner at the state level. Injecting a second regulatory scheme holds the potential to undermine the current regulatory structure by creating potential federal antitrust consequences outside of the states' oversight framework.



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Similarly, the bill holds the potential for increasing legal uncertainty, as conduct that for years has been understood to be part of a state regulatory framework for health insurers is now potentially subject to federal antitrust litigation. We ask you to consider our strong concerns that such legal uncertainty could chill or limit newly developing activities that will benefit consumers and doctors (e.g., physician portals now developing to streamline administrative processes and data aggregation efforts that are designed to respond to physician concerns that they not be evaluated only through the lens of an individual health plan's patient population) and add to the already substantial cost that litigation imposes on the health care system.

The McCarran-Ferguson Act enables a comprehensive approach to insurance regulation by the states, and the bills under consideration, by altering that approach, may lead to the unintended consequences of unraveling the existing regulatory regimen, increasing uncertainty, and decreasing transparency for consumers.

Thank you for your consideration of our thoughts on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Ignagni". The signature is fluid and cursive, with the first name "Karen" being more prominent than the last name "Ignagni".

Karen Ignagni