Submitted Testimony of the
National Association of Insurance Commissioners

to the
House Judiciary Subcommittee on Regulatory
Reform, Commercial and Antitrust Law

for the hearing on
H.R. 372, the Competitive Health
Insurance Reform Act of 2017

February 16, 2017

On behalf of state insurance regulators and the National Association of Insurance Commissioners[1] (NAIC), we write today to express our appreciation for your holding a hearing on antitrust issues in the health insurance market. The potential for bid rigging, price fixing, and market allocation is of great concern to state insurance regulators and we share your view that such practices are harmful to consumers and cannot be tolerated.

We

In short, state experience with the business of insurance is long-standing. 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.

Third, nothing in the McCarran-Ferguson Act inhibits the ability of states to allow insurance carriers from selling policies across state lines, and nothing in the Competitive Health Insurance Reform Act would "restore" an insurance carrier's ability to engage in inter-state sales. States have strict laws governing the licensing of insurance carriers to sell policies in the states and these laws are critical to protecting consumers and ensuring healthy markets. Licensure is the key that allows state regulators to take action to protect consumers. Any federal pre-emption of this requirement would result in less protections for the most vulnerable populations and the collapse of individual markets across the country. If the federal government pre-empts state licensure requirement out-of-state insurers would be able to lure healthy enrollees away from existing risk pools, which would become progressively sicker and more expensive until they ultimately fail, leaving consumers in those states with, possibly, no carriers in their states and no in-state networks of participating providers.

States already have the authority to enter into compacts with each other to allow for the sales of health plans, under agreed upon rules, across state lines. Several states have already adopted such authorizing language. This is the proper way to achieve more competition through sales across state lines, and McCarran-Ferguson does not impact this option one way or the other.

In conclusion, the NAIC respectfully asks the members of the Subcommittee to carefully consider the potential pitfalls and unintended consequences of amending or repealing the McCarran-Ferguson antitrust exemption for the business of health insurance. We know there are persuasive arguments that there is a lack of competition in some states, with few insurance companies competing against one another. Such a situation normally raises serious anti-trust concerns, but health insurance companies are different than other businesses in terms of current