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July 11, 2023

Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Attorney General Garland,

I write requesting information regarding the expanded antitrust authorities of the Department of Justice (DOJ) and your enforcement plan following the enactment of the *Competitive Health Insurance Reform Act of 2020* (CHIRA).

The McCarran-Ferguson Antitrust Exemption

The McCarran-Ferguson antitrust exemption granted to the health insurance industry allowed insurers to not meet the full requirements of federal anti-competition laws. Although it initially was a monumental step to advance competition and consumer protections, health insurance brokers increasingly began to consolidate the industry. Consequently, this exemption had a negative impact on consumers by allowing insurers to exert market power to impose artificially high premiums, unfair insurance restrictions, and harmful policy exclusions that restricted consumer choice. Antitrust laws help drive down the cost of health care services; provide consumers with more options for health insurance coverage and health care services; and encourage innovation within the health care industry by ensuring the market remains competitive.

The Competitive Health Insurance Reform Act of 2020 (P.L. 116-327)

The CHIRA (S. 350/H.R. 1418) was signed into law in the 116th Congress and protects consumers from anticompetitive practices by repealing the McCarran Ferguson Act antitrust exemption for the health insurance industry. Specifically, the CHIRA affirms that the *McCarran-Ferguson Act* does not modify, impair, or supersede the operation of antitrust laws with respect to the business of health insurance. This law would target all unfair methods of competition, regardless of whether or not the business is for-profit. It does not interfere with states' abilities to maintain and enforce their own insurance regulations, antitrust statutes, and consumer protection laws.

The law removes a key obstacle to the scope of DOJ's enforcement authority over the health insurance industry. When P.L. 116-327 was signed into law, the Assistant Attorney General stated, "Limiting the scope of conduct exempt from the antitrust laws will strengthen the Antitrust Division's ability to investigate and prosecute anticompetitive behavior. Americans deserve competition in health insurance markets just as they do in any other industry."

Antitrust authorities, including the DOJ, have been empowered to examine and take action against anticompetitive practices by health care, dental, and vision insurance companies. This enforcement will both promote competition and increase transparency in the health care industry, which will ultimately help consumers.

Request for Enforcement

Since the CHIRA's enactment, little public information has been made available as to the steps DOJ is taking to exercise its new authorities to oversee and take action against anticompetitive practices in the health insurance industry. Without appropriate enforcement, anticompetitive acts like down-coding, bundling, and incorrect denial of claims will continue unabated.

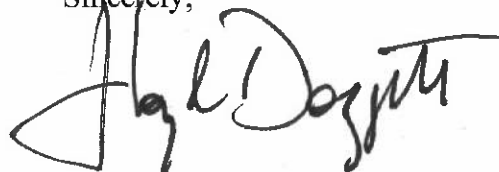
I respectfully request answers to the following questions:

1. Since the enactment of the CHIRA, what actions, if any, has the Antitrust Division taken to enforce the antitrust laws against health insurance companies that are no longer covered by the McCarran-Ferguson antitrust exemption? Please provide as much detail as possible.
2. What steps has the DOJ taken to clarify or create new guidelines for the health insurance industry regarding the CHIRA? Please provide as much detail as possible.
3. What challenges does the DOJ face in enforcing the CHIRA and what resources may be helpful to the Antitrust Division in order to better enforce antitrust laws in health insurance markets?

I urge you to use your authority to quickly enforce this critical law, and in addition, to investigate collusive practices among insurance companies that have negatively impacted providers.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. O'Connell". The signature is written in a cursive, somewhat stylized font.