

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

The Competitive Health Insurance Reform Act of 2020 (CHIRA) repealed the antiquated McCarran-Ferguson antitrust exemption granted to the health insurance industry, which allowed insurers to not have to meet the full requirements of federal anti-competition laws. The legislation (S. 350/H.R. 1418) was signed into law in the 116th Congress.

Please urge the Department of Justice (DOJ) to quickly enforce this critical law, and in addition, to investigate collusive practices among insurance companies that have negatively impacted health care providers, including dentists.

Background

The McCarran-Ferguson antitrust exemption had a negative impact on consumers in the form of artificially high premiums, unfair insurance restrictions, and harmful policy exclusions.

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. CHIRA only applies to the business of health insurance. It will not interfere with states' abilities to maintain and enforce their own insurance regulations, antitrust statutes, and consumer protection laws.

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."

The July 9, 2021, Executive Order on Promoting Competition in the American Economy states it is "the policy of my Administration to enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony - especially as these issues arise in...health care markets (including insurance...markets)."

Two groups of bipartisan legislators have sent a letter to the DOJ and the FTC asking them to utilize CHIRA to investigate health insurers. Senator Daines and Senator Leahy in their letter asked the agencies to "oversee, examine, and take action against potentially anticompetitive practices within the health industry."

By not quickly and thoroughly enforcing CHIRA, anticompetitive acts like down-coding, bundling, incorrect denial of claims and forcing providers to accept payment with a fee laden credit card, will continue unabated.

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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, including the business of dental insurance. Additionally, the law would not apply to a contract, combination, or conspiracy to:

- Collect, compile, or disseminate historical loss data;
- Determine a loss development factor for historical loss data;
- Perform actuarial services if the collaboration does not involve a restraint of trade; or
- Develop or disseminate a standard insurance policy form if adherence to the form is not required.

This law would target all unfair methods of competition regardless of whether or not the business is for profit.

Who is the Academy of General Dentistry (AGD)?

Founded in 1952, the AGD has over 40,000 members from across the United States and is the only professional association that exclusively represents the needs and interests of general dentists. As the country's second-largest dental association, AGD works to promote oral health to the public and foster general dentists' continued proficiency through quality continuing education.