

September 15, 2025

Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Re: DOJ Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce (Docket No. OLP182)

To the Department of Justice and the National Economic Council:

The American Dental Association (ADA), the leading authority on oral health in the United States and representative of more than 159,000 dentists nationwide, appreciates the opportunity to comment on the Department of Justice's August 15, 2025 Request for Information (RFI). This notice seeks input on state laws that may unduly burden interstate commerce, raise costs, or impose unnecessary obstacles for small businesses. Dentists are overwhelmingly small business owners, and the regulatory environment they face is shaped not only by federal requirements but also by a patchwork of state laws. These inconsistencies often restrict competition, complicate practice management across state lines, and increase costs for patients and providers.

We commend the Department of Justice (DOJ), in partnership with the National Economic Council (NEC), for undertaking this review as part of Executive Order 14219's broader effort to reduce barriers to entrepreneurship and interstate commerce. In response to the RFI, we highlight a key area where state-level practices have national consequences for the dental sector and broader health care markets.

Anticompetitive Effects of State Insurance Laws in Light of the Competitive Health Insurance Reform Act (CHIRA)

In 2020, Congress passed the Competitive Health Insurance Reform Act (CHIRA), which repealed the federal antitrust exemption for health and dental insurers. CHIRA ensures that insurers are subject to the same competition laws as other businesses and prohibits conduct such as price fixing, bid rigging, or market allocation.

Despite this reform, certain state regulatory structures continue to insulate dominant insurers from competition:

- **Territorial restrictions and charters** have historically segmented markets, discouraging head-to-head competition and reinforcing incumbent dominance.
- **Barriers to provider participation** in some states allow insurers to exclude dentists from networks, narrowing access and suppressing reimbursement.
- **Contractual clauses** such as most-favored-nation (MFN) provisions or caps on non-covered services (NCS) fees remain permissible in some states, enabling dominant carriers to preserve pricing power.

These practices undermine CHIRA's pro-competition intent and affect markets nationally, particularly for multi-state employers and provider groups. DOJ and the Federal Trade Commission (FTC) should continue to scrutinize state-enabled structures with

anticompetitive effects, and coordination with state insurance regulators and the National Association of Insurance Commissioners (NAIC) is essential. Greater transparency around market share, loss ratios, and contracting terms would also allow policymakers and the public to better evaluate whether competition is functioning.

Emerging Concerns Regarding Insurer Ownership of Dental Practices

Recent developments also highlight how state laws may enable or fail to address new forms of vertical integration in dental care delivery. For example, Delta Dental of Wisconsin, an insurer, recently acquired a chain of dental practices known as Cherry Tree Dental. This type of transaction raises significant questions about potential conflicts of interest when an insurance carrier acts simultaneously as payer and provider of care.

From a business perspective, large insurers have incentives that may not always align with patient care. Without appropriate safeguards, this can result in treatment options being guided more by cost-control strategies than by clinical judgment. ADA policy holds that the health interests of patients are best protected when dental practices are owned and controlled by licensed dentists in the jurisdiction where they operate.

We encourage DOJ and NEC to consider how state laws governing the ownership and regulation of dental practices may affect interstate commerce and competition when insurance companies enter the delivery system directly. This issue, if left unchecked, could compound the anticompetitive dynamics already identified in dental insurance markets.

The ADA supports DOJ and NEC in their effort to identify and address state laws that impose significant adverse effects on interstate commerce and small businesses. In dental insurance, inconsistent state regulation and legacy state practices that entrench insurer dominance all have national implications.

We urge DOJ and NEC to coordinate with HHS, FTC, and state regulators to clarify preemption boundaries, address anticompetitive state practices, and ensure that CHIRA's promise of robust antitrust enforcement is realized. The ADA stands ready to assist with additional data, analysis, and perspective as this review moves forward.

Sincerely,

/s/

Brett Kessler, D.D.S.
President

/s/

Elizabeth A. Shapiro, D.D.S., J.D.
Interim Executive Director