

FAQs

Q. Will the new law make health insurance companies and dental plans adhere to the same antitrust marketplace rules that dentists must follow?

A. The new law places health insurance and dental plans in the same position with respect to the federal antitrust laws that other businesses are in.

Q. Will the new law make the Federal Trade Commission (FTC) or the Justice Department (DOJ) more likely to investigate insurance companies and dental plans that may be engaged in anticompetitive activities?

A. The main rationale for the McCarran-Ferguson Act when it was adopted in 1947 was to have states manage the regulation of the business of insurance. This historical reason, along with the fact that antitrust allegations against insurance companies are usually met with the McCarran-Ferguson exemption defense, appears to have made the FTC and DOJ hesitant to proceed against insurance companies even when their conduct is not protected by the limited exemption. For example, before the exemption was eliminated, Delta Dental asserted it as a defense to the pending class action lawsuit against the company and in which the ADA is a plaintiff. With the new law's clear message that there is no basis for continuing the exemption, it is hoped that the FTC and DOJ will more actively investigate suspected anticompetitive conduct and pursue sanctions when it is found.

Q. How does the new law impact self-funded dental benefit plans (so-called "ERISA Plans")?

A. The new law's removal of the limited exemption to the federal antitrust laws that the business of health insurance has enjoyed under the McCarran-Ferguson Act applies to self-funded plans.

Q. Does the new law mean that dentists can participate with other dentists in boycotts of dental plans?

A. No. The new law does not affect this established principle of antitrust law that generally prohibits collaboration among competitors throughout the economy.

Q. Does the new law mean that dentists can organize to collectively negotiate with dental plans?

A. No. The new law does not affect this established principle of antitrust law that generally prohibits collaboration among competitors throughout the economy.

Q. Will the new law increase reimbursement rates?

A. There is little reason to believe that the new law will directly result in increased reimbursement rates in the near future. The positive influence the new law is intended to have in increasing competition among health insurance and dental plans in ways that will benefit both patients and providers may include the creation of plans that will offer improved coverage for patients and more attractive terms for the providers who the plans will want to participate in their networks.