

## **Repeal of the Antitrust Exemption for Health Care Insurance**

### **What Does This Law Do?**

Passage of the Competitive Health Insurance Reform Act of 2020 is the culmination of a multi-year effort by the ADA to persuade Congress that health care insurance, including dental plans, should no longer be protected from federal antitrust laws by a limited exemption established in 1947 under the McCarran-Ferguson Act. The new law makes the conduct of health insurers fully subject to the nation's antitrust laws, just like that of all other U.S. businesses. By removing the exemption obstacles to investigation and enforcement erected by the McCarran-Ferguson Act, the ADA believes that both the Federal Trade Commission and the Department of Justice will be more likely to investigate possible anticompetitive practices and activities of health care insurers.

### **How Might This Benefit the Dental Profession, Dental Practices and Patients?**

The law is aimed at improving transparency and competition in the health, dental, and vision insurance marketplaces. That said, it is unlikely that there will be any immediate changes for the profession, dental practices and patients/consumers. In the long-term, we expect to see changes in the dental plan marketplace that would eventually benefit all. In the past, many experts believed that the antitrust exemption suppressed the health insurance market dynamic.

If dental plan companies are compelled to compete fairly and transparently, we should begin to see increased innovation and choice for consumers and providers. As the dental plan marketplace changes over time, these dental plan companies might look for ways to distinguish themselves by offering better levels of coverage, expanded provider networks and services, and other improved features.

Consumer Reports, which has long advocated for the reform legislation, praised the passage of the bill as being good for both consumers of health care services and providers. On Dec. 22, 2020, Consumer Reports wrote *"the antitrust exemption has essentially allowed health insurers to act as a monopoly, making demands in lockstep on the terms they will offer consumers and healthcare providers. The resulting squeeze puts pressure on providers to cut corners on service in order to increase the profits the health insurers can extract."*

Enactment of this legislation should begin to change that detrimental pressure. It should open up more opportunities for new insurance companies to enter the market and compete in offering better and more affordable coverage to consumers and better terms to doctors, hospitals, and providers. Existing insurance companies will have to start finding ways to offer those choices. Ultimately these choices will mean a better product for consumers, and a better arrangement for all who seek to provide health care to them.

The U.S. Department of Justice agreed, writing that *"where there is effective competition, coupled with transparency, in a consumer-friendly regulatory framework, insurers will be spurred to compete against each other by offering plans with lower premiums, reducing copayments, lowering or eliminating deductibles, lowering annual out-of-pocket maximum costs, managing care, improving drug coverage, offering desirable benefits, and making their provider networks more attractive to potential members."*<sup>1</sup> The Competitive Health Insurance Reform Act helps to achieve that goal.

If you have specific question about the legislation, please feel to reach out to either Chris Tampio, Director of Congressional Affairs, at [tampioc@ada.org](mailto:tampioc@ada.org) or Mike Kendall, Senior Associate General Counsel, at [kendallc@ada.org](mailto:kendallc@ada.org).

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<sup>1</sup> See, e.g., Competitive Impact Statement, United States v. Humana, Inc. and Arcadian Management Services, Inc., No. 12-cv-464 (D.D.C., March 27, 2012), at 8, available at <https://www.justice.gov/atr/case/us-v-humana-inc-and-arcadian-management-services-inc>.