



ISSUE BRIEF

Preserve the McCarran-Ferguson Exemption

S.350 and H.R.1418 would harm consumers by reducing competition in the insurance market, resulting in fewer choices and higher rates.

S.350 and H.R.1418 would repeal The McCarran-Ferguson Act, which has been law for over 60 years. The Act clarifies that the states, rather than the federal government, have regulatory authority over insurance. The Act does not provide a blanket exemption from the antitrust laws for insurers. The Act limits the application of federal antitrust laws to insurers as long as state law regulates the business of insurance, and the insurer's activity does not include boycott, coercion, or intimidation.

However, if states do not regulate insurance, federal antitrust law still applies. In addition to the concerns outlined below, repeal could throw into question the authority of states to regulate insurance.

One purpose of this exemption is to enable insurers to pool historic loss data to project future losses more accurately, and thereby charge reasonable prices for their products. Utilized mostly in the Property and Casualty insurance space, the exemption allows state-approved advisory organizations to collect statistical information on loss costs from insurers and provide it to their members, thereby enabling small and medium-sized insurers that do not generate sufficient claims data to compete.

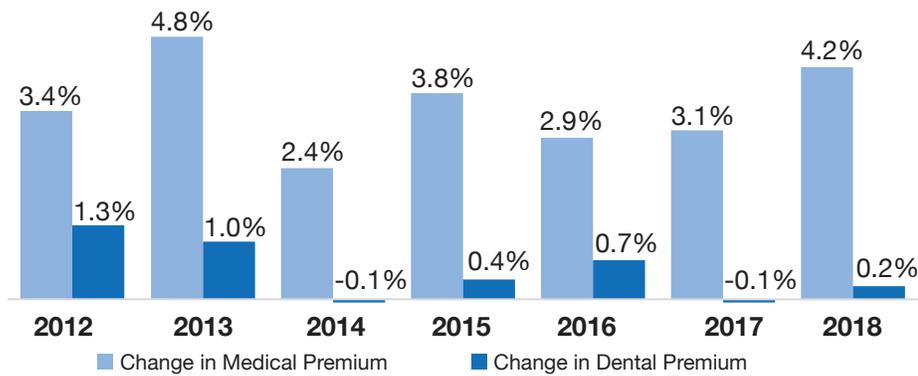
Dental benefits deliver value and choice at low and stable premiums in a competitive market.

- Nationwide, dental premiums are roughly 1/12th of medical premiums and have remained stable over the last 6 years with changes ranging from -0.06% to 1.35%.
- NADP members provide an average of 21 DPPO plan options across all States. Premiums average \$25 per enrollee per month.

Repealing McCarran would harm consumers through increased systemwide costs from needless litigation.

- While dental carriers do not typically engage in activities covered by McCarran, repeal would expose them to litigation intended to test the limits of their conduct in the absence of the exemption.
- Unwarranted litigation would harm consumers via: (1) increased costs with no increase in benefit value and (2) avoidance of new, potentially pro-competitive activities to avoid the cost of unwarranted litigation.

National Change in Premium



Source: 2019 NADP Dental Benefits Report on Enrollment

Other Perspectives:



“Eliminating the antitrust exemption in McCarran-Ferguson for health carriers will do nothing to address the real drivers of higher health insurance premiums: the cost of health care and utilization. In fact, as proposed, state regulators believe the Competitive Health Insurance Reform Act would lead to higher administrative costs, more confusion and uncertainty, and more instability in the health insurance markets and, therefore, higher premiums.”
– National Association of Insurance Commissioners (NAIC)

“Repeal of the McCarran-Ferguson antitrust exemption for insurance would have no beneficial impact on health insurance markets, which are both extensively regulated and subject to a wide range of antitrust oversight. Repeal ... would also have a harmful impact on health insurance markets, by encouraging litigation challenging pro-consumer activities and chilling other pro-consumer activities by the threat of such litigation.”
– America’s Health Insurance Plans (AHIP)

