

Blog Post

House Passes Bill that Would Repeal Health Insurer Antitrust Exemption

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The U.S. House of Representatives passed H.R. 1418, the “Competitive Health Insurance Reform Act,” by a voice vote on September 21. The legislation, which was introduced back in early 2019 by Congressman Peter DeFazio (D-Oregon), would reduce the scope of the McCarran Ferguson Act’s antitrust exemption, which currently provides insurers with an exemption from the federal antitrust laws. Notably, similar legislation has repeatedly been introduced over the last ten years (by Congressman DeFazio, and others), but never enacted into law. Given the very small amount of time left before Congress adjourns (and other pressing matters that Congress must address, including the budget), it seems unlikely that the bill will be taken up by the Senate, much less passed by that body. However, if enacted into law, H.R. 1418 could have a profound impact on health insurers, given the significant reduction in the scope of the exemption that will remain if the bill becomes law.

Specifically, under current law, the McCarran Ferguson Act grants all insurers an exemption from the federal antitrust laws for conduct that constitutes “the business of insurance,” is “subject to state regulation,” and does not constitute an act of “boycott, coercion or intimidation.” 15 U.S.C. 1013 *et seq.* H.R. 1418 would eliminate the exemption for health insurers for all conduct *except* (1) the collection, compilation or dissemination of historical

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loss data; (2) determination of a loss development factor applicable to historical loss data (which is a component of how insurers typically calculate rates); (3) the performance of actuarial services; and/or (4) the development of standard insurance policy forms, provided that the insurers do not agree to adhere to the terms of such forms. Notably, H.R. 1418 makes clear that the scope of McCarran's antitrust exemption would not be modified, at all, for life insurers or property and casualty insurers.

Congressman DeFazio applauded the House's passage of his bill, stating, "Even before the COVID-19 pandemic, nearly 1 in 4 Americans – including insured Americans – were already skipping medical care and prescription drug doses because of high costs... My legislation will protect consumers and make sure the health insurance industry plays by the same rules as virtually every other industry in America." The bill now moves to the Senate where, as noted above, its prospects remain quite uncertain. Stay tuned.

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