

# **ADA** American Dental Association

America's leading advocate for oral health

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## **2009 Washington Leadership Conference**

### **HR 1583 Insurance Industry Competition Act of 2009**

#### **Repeal the McCarran-Ferguson Act Exemption for Insurance Companies**

##### **Health Care Consumers Benefit from Increased Market Competition**

The American Dental Association (ADA) believes that health care consumers and the public generally are adversely affected by the McCarran-Ferguson Act exemption from federal antitrust laws and supports the "Insurance Industry Competition Act of 2009," H.R. 1583, introduced by Representative DeFazio (D-OR). We believe that repeal of the McCarran-Ferguson Act will help consumers.

H.R. 1583 would bring the insurance industry into line with other American businesses by eliminating the special treatment granted to insurance institutions almost 65 years ago with passage of the McCarran-Ferguson law. Repeal of the McCarran-Ferguson antitrust exemption for the "business of insurance" would increase opportunities for challenging collective action by insurance companies.

Today, virtually all policy makers recognize the need to curtail the rising cost of health care coverage and to furnish consumers with more coverage options. Passage of H.R. 1583 could help interject more competition into the insurance marketplace by potentially fostering greater antitrust enforcement against the insurance industry by the Federal Trade Commission and the Justice Department in instances where state regulators fail to act. When insurance competitors are permitted to work jointly, consumers are less likely to see as much innovation and variety in the marketplace as they would in an atmosphere of robust competition for their business.

H.R. 1583 comes on the heels of widely-circulated press reports concerning the serious conflicts of interest alleged against the insurance industry by both public officials and private litigants. Specifically, the allegations are directed at the universal use by insurance companies of the so-called "Ingenix data" in setting "usual, customary and reasonable" reimbursement rates for out-of-plan health-care providers. The data was supplied by insurance companies to a large insurance company, which compiled and owned it.

The key problem with this out-of-network reimbursement system is that the UCR rates were allegedly not calculated in a fair and impartial way. According to the Attorney General for New York State, the Ingenix databases

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understate the market rate for physician visits by rates ranging from 10 to 28 percent across the state. It was alleged that consumers got much less than the promised UCR rate, so that instead of getting reimbursed for 80% of the UCR charge, they effectively got 70%, 60% or less.

Even though anticompetitive conduct in setting reimbursement rates isn't covered by the McCarran-Ferguson exemption, there is little doubt that the broad exemption from antitrust enforcement has chilled investigations and prosecutions of anticompetitive activity in the industry. Without this chilling effect, the Ingenix situation might have been addressed years ago. It is even possible that it would not have arisen in the first place.

**Dentists, their patients, and the public at large are all victims of McCarran-Ferguson's negative impact on competition among entities in the insurance industry and all would benefit from its repeal. Accordingly, the American Dental Association urges Members of Congress to cosponsor H.R. 1583.**

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