

COMPETITIVE HEALTH INSURANCE REFORM ACT OF 2017

Antitrust laws are designed to prevent restraints on trade that harm consumers and less powerful competitors. However, in 1945, Congress passed the McCarran-Ferguson Act, which exempted certain insurance practices from federal antitrust laws. Today, this has led to consolidation and concentration within the health insurance industry. As of December 2017, the five largest U.S. commercial health insurance companies cover approximately 43 percent of the country's insured population.¹ In fact, many health insurance markets are dominated by only one or two insurers.² This means that patients have fewer options and limited ability to influence the marketplace with their business. Further, this consolidation means physicians are frequently placed in positions of diminished bargaining strength, and health plans can impose unilateral, non-negotiable contracts.

These contracts give insurers the power to deny patients access to optimal care, and impose costly administrative burdens on physicians that further limit their ability to provide care. **The AAOS believes that Congress must pass legislation to allow equitable negotiations between physicians and health insurance plans to ensure access to quality care.**

Why H.R. 372 Matters:

H.R. 372 would amend the McCarran-Ferguson Act to ensure that federal antitrust laws apply to the business of health insurance. As was expressed in the March 21, 2017 Statement of Administration Policy, the bill "supports the goal of giving American families and businesses more control over their own healthcare choices by promoting greater health insurance competition."³

H.R. 372 – the Competitive Health Insurance Reform Act – Will:

- **Increase competition in the health insurance market and level the playing field between providers and health plans.** As a result, H.R. 372 will promote lower prices, greater consumer choice, and increased innovation. And by allowing equitable negotiations between physicians and health insurance plans, H.R. 372 will ensure access to quality care.
- **Ensure an effective regulatory framework to help safeguard consumers, keep costs down, and protect access to quality health care.** Insurance markets should function under the rules of competition that apply to every other part of the health care system.
- **Respect states' rights.** This bill would not interfere with the states' ability to maintain and enforce their own insurance regulations, antitrust statutes, and consumer protection laws.
- **Preserve "safe harbors."** H.R. 372 keeps in place the antitrust exemption for "safe harbor" activities, such as compilation of historical loss data.

What Congress Should Do:

Congress should support the passage of the *Competitive Health Insurance Reform Act* into law.

¹ <https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0858>

² <https://www.ama-assn.org/metro-areas-increasingly-dominated-single-insurance-companies>

³ https://www.whitehouse.gov/sites/whitehouse.gov/files/briefing-room/presidential-actions/related-omb-material/saphr372h_20172103.pdf