

# The Competitive Health Insurance Reform Act

## Background

- In the 1944 Supreme Court Case, *United States v. South-Eastern Underwriters Association*, the Court established that the business of insurance constitutes "interstate commerce," and therefore is subject to Congressional oversight under the Commerce Clause of the Constitution. This decision specifically held that the Sherman Act – the federal antitrust statute – applied to insurance.
- In quick reaction, insurance companies lobbied congress to pass the McCarran-Ferguson Act of 1945 to establish a powerful special-interest exemption for the industry from federal antitrust laws.
- After 70 years, it is apparent that the unbridled antitrust exemption created by Congress in the 1940's was not wise. Over the decades - and expeditiously since the passage of Obamacare in 2009 – the health insurance market has mutated into one of the least transparent and most anti-competitive industries in the United States.

## Purpose

- The Competitive Health Insurance Reform Act would amend McCarran-Ferguson to restore the application of federal antitrust and competition laws to the business of health insurance. The passage of this bill into law is an essential step towards increasing competition in health insurance markets and lowering prices for consumers.
- The bill will ensure that health insurance issuers are subject to the same unfair trade practices laws that other businesses are required to comply with, including those which prohibit price fixing, bid rigging, or market allocations to the detriment of consumers.
- The health insurance exemption to federal antitrust law places an undue burden on the states who may wish to take action against companies who break state antitrust law, but do not have the resources to pursue such action. Application of federal antitrust law will benefit hospitals, doctors, and patients alike as health insurers compete to provide quality coverage.
- This issue has broad bipartisan support. A form of this legislation passed the House during the 111<sup>th</sup> Congress 406 - 19 and passed the House in the 112th Congress by a voice-vote amendment to the RSC Healthcare bill.



## **Section-by-Section**

### **Section 1: Short Title - Competitive Health Insurance Reform Act of 2015**

### **Section 2: Findings**

- Open, free, and fair competition has made the United States the strongest economy in the world.
- As a general proposition, Government should ensure that no industry obtains an unfair competitive advantage and that the playing field is equal. The Congress should not play favorites with certain industries or special interest groups by exempting one group from the general application of the law.
- There is no factual basis supporting any further exemption of the health insurance industry from federal antitrust and unfair competition laws.
- Enforcement of these laws is most appropriately done through the U.S. Department of Justice

### **Section 3: Purpose**

- Restore the application of federal anti-trust and competition laws to the business of health insurance.
- Ensure health insurance issuers are subject to the same antitrust and unfair trade practices laws that all businesses are required to comply with.
- More effectively ensure that such insurers are subject to federal laws against price fixing, bid rigging, or market allocations to the detriment of competition and consumers

### **Section 4: Restoring the Application of Antitrust Laws to Health Sector Insurers**

- Amends the McCarran-Ferguson Act to clarify that nothing contained in that Act may modify, impair, or supersede the operation of any federal antitrust law with respect to the business of health insurance (including the business of dental insurance)
- Further clarifies that only “traditional health insurance” is affected by this bill, not the business of life insurance (including annuities) or property and casualty insurance

## **Legislative History**

- A form of this legislation passed the Democratic-led House during the 111<sup>th</sup> Congress, 406 - 19 (Roll no. [64](#)).
- This legislation passed the Republican-led House in the 112<sup>th</sup> Congress as an amendment by voice vote.
- This bill has been included in the Republican Study Committee’s Health Care Reform bill in the 112<sup>th</sup>, 113<sup>th</sup>, and 114<sup>th</sup> Congress.