McCarran-Ferguson Exemption Needed for Competitive Insurance Markets

The McCarran-Ferguson Act, which grants limited exemption from federal antitrust law for “the business of insurance,” is an important part of maintaining stability in the medical professional liability (MPL) insurance market. Enacted in 1945, the statute was designed to allow insurers to share certain information necessary to ensure appropriate underwriting. It is important to note that the law does not give blanket immunity from prosecution for anticompetitive behavior, and, in fact, insurers are subject to the antitrust laws of the states in which they operate, in addition to numerous other state pricing regulations that are unprecedented, in both number and scope, outside the insurance industry.

Note that the majority of MPL insurers are owned and/or operated by healthcare providers, i.e., the individuals who purchase the insurance are also running the companies that sell it. It would make no sense for these companies to engage in anticompetitive behaviors that lead to increased premium prices, because the policyholders would in essence be gouging themselves. Perhaps this is why no evidence of any anticompetitive practices has been uncovered by those who promote repealing the limited antitrust exemption.

A Congressional Budget Office report said that McCarran-Ferguson repeal is unnecessary. It stated, accurately, that MPL insurers are not engaged in any noncompetitive behaviors, and that, if they were, they could be prosecuted for such conduct under current law, because, “states already bar the activities that would be prohibited under federal law,” if McCarran were repealed. The CBO report went on to say that, in fact, “enacting the legislation would have no significant effect on the premiums that private insurers charge.”

In evaluating the benefits of McCarran-Ferguson, the Congressional Research Service went into more depth, stating that, “if insurers can pool their information [as currently allowed], the resulting rates can more accurately reflect risk and thus be lower for consumers as a whole.” They also noted that if the exemption is repealed, “many lawsuits challenging some insurer-cooperation practices as violations of the federal antitrust laws would be likely,” and that “further consolidation in the insurance industry…is a likely, albeit, ironic, possibility.” Neither of these latter scenarios, which could increases insurers’ expenses and decrease competition, would be helpful to consumers.

The Competitive Health Insurance Reform Act (H.R. 911) specifically excludes MPL insurers from the antitrust changes aimed at health insurers. While the PIAA does not support repealing the limited McCarran-Ferguson exemption for any insurers, it is pleased that the bill’s sponsor, Congressman Gosar, recognizes that MPL is a separate issue and excluded such insurers from his legislation. The PIAA strenuously opposes any efforts to add MPL insures to H.R. 911 or any other antitrust bill considered by the Congress.

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