

**Contact:** Jessica Hanson  
**Phone:** 202-286-5446  
**E-Mail:** Jessica.Hanson@pciaa.net

## FOR RELEASE ON RECEIPT

---

February 5, 2010

# PCI Calls Insurance Bill Misguided, Potentially Flammable

WASHINGTON – A bill announced today to amend the McCarran-Ferguson Act could hurt consumers in the important medical professional liability insurance market, according to the Property Casualty Insurers Association of America (PCI).

While debate on broad ranging health care legislation has been delayed, Congressman Tom Perriello (D-VA) and Congresswoman Betsy Markey (D-CO) today introduced a stand alone bill to remove the limited antitrust exemption for health and medical professional liability insurers under the McCarran-Ferguson Act of 1945.

“This attack on McCarran-Ferguson misses the mark,” said Ben McKay, senior vice president of PCI. “Enforcement of insurance is conducted at the state level because insurance is regulated at the state level. This bill will add another layer of duplicative oversight that in the end will cost consumers.”

The McCarran-Ferguson Act delegates insurance regulation and enforcement of antitrust laws to the states. Every state has a comprehensive insurance code that governs the insurance industry, including subjecting the industry to strict antitrust enforcement. Proponents of the bill have used misguided information in public debate. McCarran-Ferguson allows property and casualty insurance companies to share costly and detailed historical risk data in a way that allows them to set premiums at a level that ensures they will be able to afford all potential payments to policyholders. This fosters competition in the industry by allowing smaller companies access to this data, which they could not afford to produce on their own.

“Targeting McCarran-Ferguson will not provide benefits to consumers or the marketplace,” said McKay. “This bill will not lower health care costs; on the contrary, it may well increase them, according to a recent Congressional Research Service report. It will not expand insurance coverage either. Instead, it threatens to cause enormous marketplace disruption that would have the perverse effect of discouraging new market entrants, making it harder for smaller companies to stay in business, and driving more costly litigation into the system.”

Without this data-sharing ability, many medical liability insurers may be forced to leave the market, which will not only impact doctors and hospitals, but also many other types of health care providers that rely on access to a competitive medical liability insurance market, including dentists, nurses, optometrists, paramedics, x-ray technicians, and nursing homes, among others.

At a time when Americans are calling on their government to get health care costs under control, this legislation could increase those costs and ultimately create another medical liability availability crisis.

“This bill could prove flammable,” said McKay. “Revisiting McCarran-Ferguson could reignite a medical malpractice crisis. To amend McCarran’s antitrust provisions without evidence of the need, but with plenty of evidence of the potential harm, would be irresponsible and would drive up health care costs,” said McKay.

### ***Additional Background***

There is plenty of current, independent and objective analysis that McCarran-Ferguson works as intended to foster competition and that changing it would have dangerous unintended consequences.

In 2009, the Congressional Research Service (CRS) reported that amending the antitrust provisions of McCarran would result in “many lawsuits challenging some insurer-cooperation practices.” The report added that prohibiting necessary and pro-competitive insurer information sharing could, “actually disserve consumers and lessen competition between insurance companies; e.g., if information sharing were categorically prohibited, some small companies that require it could be forced to leave the market.”

The McCarran-Ferguson Act’s antitrust provisions were intended to be and are used for pro-competitive purposes only. The CRS has confirmed the pro-competitive nature of McCarran-Ferguson’s antitrust provisions, and affirms that efforts to further limit McCarran-Ferguson’s antitrust provisions could lead to less competition, an outcome that would undercut the fundamental purpose of the federal antitrust laws.

The National Association of Insurance Commissioners (NAIC) stated that “no state insurance regulator has seen evidence that suggests medical malpractice insurers have engaged or are engaging in price fixing, bid rigging, or market allocation.” McCarran does not give insurers a blanket exemption from antitrust laws. In October, 2009, the Congressional Budget Office (CBO) also noted that “State laws already prohibit issuers of health insurance and medical malpractice insurance from engaging in practices such as price fixing, bid rigging, and market allocations.”

PCI is composed of more than 1,000 member companies, representing the broadest cross-section of insurers of any national trade association. PCI members write over \$180 billion in annual premium, 37.4 percent of the nation’s property casualty insurance. Member companies write 44 percent of the U.S. automobile insurance market, 30.7 percent of the homeowners market, 35.1 percent of the commercial property and liability market, and 41.7 percent of the private workers compensation market.