

# PUBLICATION

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## Republican Alternative to the Affordable Care Act Addresses the McCarran Ferguson Act's Antitrust Exemption

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On June 22, Republicans in the House of Representatives announced a new proposal to "repeal and replace" the Affordable Care Act. While not formal legislation, the proposal – a 37-page policy statement entitled "A Better Way" – argues that the Affordable Care Act has not worked, and that an alternative would provide Americans with "more choices, lower costs and greater flexibility." Legislation based upon the recommendations set forth in the policy statement is likely to be introduced by House Republicans next Congress.

Notably, the policy statement also addresses the claim that the limited antitrust exemption provided to health insurers by the McCarran Ferguson Act (15 USC 1011 *et seq.*) is, in fact, the reason for escalating health care costs. Specifically, it notes that "some have raised concerns regarding the possible link between the limited antitrust exemption under McCarran Ferguson and lack of competition in insurance markets," and acknowledges that there have been several bills introduced that would repeal the exemption. (In this Congress alone, there have been no fewer than four such bills – H.R. 99, H.R. 494, H.R. 2462 and H.R. 2653).

Rather than taking a firm position on McCarran repeal, the policy statement instead suggests that the Government Accounting Office conduct a study "to examine the advantages and disadvantages of removing the exemption." However, the policy statement appears to suggest continued support for McCarran among House Republicans (rather than repeal), noting that the Congressional Budget Office has previously concluded that "enacting [repeal] legislation would have no significant effect on premiums that private insurers would charge for health insurance" and that "to the extent that insurers would become subject to additional litigation, their costs and thus premiums might increase." Consequently, it appears that November's election results will likely play a significant role in determining the prospects for McCarran repeal next Congress. Stay tuned.