

Joint Negotiations by Dentists with Carriers Federal and State Perspectives

Antitrust Law in General

The goal of antitrust laws at the federal level is to promote marketplace competition by restricting unreasonable restraint of trade and joint activity by competitors. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) are the agencies that enforce antitrust laws. Generally speaking, these agencies regard joint negotiations over fees by independent health care providers with carriers as price-fixing—an antitrust violation.

There are legislative approaches that appear to be available to address the DOJ and FTC enforcement of antitrust laws at the state level. While there may be a number of approaches, we focus only on the legislative/advocacy effort.

Federal antitrust laws generally prohibit joint negotiations by competitors because they can reduce market competition. The *state action doctrine* appears to provide a nuance with respect to these antitrust laws for anticompetitive activity when a state legislature permits the activity and the state actively supervises the activity.

State Action Doctrine

The state action doctrine, based on a 1943 Supreme Court decision, establishes that the Sherman Antitrust Act does not “restrain state action or official action directed by a state.” Application of the concept, born out of *Parker v. Brown*, ***shields certain anticompetitive conduct from federal scrutiny when such conduct is: a) in furtherance of a clearly stated state policy; and, b) actively supervised by the state.*** State supervision is required in order to ensure private parties are acting in the public good and not just furthering their own interests.

State Legislation

Several states have taken some level of action in this area in the last decade or so. **At least fourteen states have taken some form of public policy action for health care providers in general.** Many state bills are limited to physicians, behavior health providers and/or dentists, while others are more general (i.e. applicable to ‘health care providers’). The states below are live linked to the state website that provides info on the bills.

- [Alaska](#)(p), [California](#), [Connecticut](#), [Florida](#) (bill available from ADA)(d)([New Jersey](#)(d)(S1033), [New York](#), [Massachusetts](#), [Michigan](#), [Ohio](#), [Rhode Island](#), [Tennessee](#), [Texas](#)*, [Washington](#), [West Virginia](#)).
 - **Bold type** = Enacted into law; (p) = Physician only; (d) = includes dentists either directly or indirectly virtue of broad definition
 - * Law expired under sunset provision