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Expanding the Health Insurance Market: Giving Texans More Choices

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The American health care system has been hailed as the best in the world, but our top of the line care comes at a price and as that price rises, so does the cost of the health insurance that many need in order to pay for it. Notably, a number of state regulations that define health insurance benefits contribute to the rising price of premiums and as each mandate gradually increases the cost of health plans, it becomes more difficult for individuals and families to afford health insurance.

STATE-BASED REGULATION

The statutory power to regulate health insurance evolved from a 1945 ruling by the U.S. Supreme Court which lead Congress to enact the *McCarron-Ferguson Law* "permit[ting] the states to continue regulating the insurance business."[1] The intent of the legislation was to provide insurers a narrow exemption from federal antitrust laws, making it possible for insurance companies to collectively compare data in order to set reimbursement rates and assess the transfer of risk, but just as importantly, continuing the state's regulatory control of their local insurance industry allowed state legislatures to construct independent insurance markets designed around individual state regulations.

McCarron-Ferguson has been criticized as anticompetitive and applauded for allowing state governments to craft unique health insurance markets that could potentially spur competition and innovation. There is some truth to both views, since the same controls under *McCarron-Ferguson* that give state legislatures the ability to create these competing markets also allow them to curtail interstate commerce.

Rather than allowing consumers to make their own decisions regarding health insurance benefits, most state regulatory regimes dictate the structure of health insurance policies through mandates. The coverage requirements mandated by state legislatures arbitrarily inflate the cost of health insurance, making even a basic plan too expensive for many consumers who have no alternative to the state dictated plans.

With 55 mandated benefits, Texas is one of the five most heavily regulated health insurance markets in the country.[2] Texas law requires health insurance policies to cover services ranging from in vitro fertilization to marriage and occupational therapists, and it also includes a mental health parity mandate that requires insurers to pay as much toward mental health care as they do for traditional health care. It has been estimated that mental health parity mandates increase premiums by as much as 10 percent.[3]

According to a report by the Hoover Institution health insurance regulations cost $330 billion a year, a cost that they claim would be significantly lower if the government refrained from interfering in the health insurance market.[4] These additional costs are passed on to consumers who must foot the bill. Researchers suggest that the combined impact of health insurance mandates can drive up the cost of a basic health plan by close to 50 percent.[5] Other estimates suggest that as many as one in four uninsured individuals has been priced out of health insurance by the inflated costs resulting from mandated benefits.[6]

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The problem is magnified by state policies that deny consumers the option of purchasing less regulated health insurance from other states. Whether the implementation of these de facto trade barriers is motivated by an earnest desire to protect consumers or fear of interstate competition, the result is the same: limited choices and inflated prices.

Today, every state enforces these regulatory trade barriers by restricting insurance transactions between residents in their state and insurance companies regulated by a different state. According to Dr. Sven Larson, "When states prevent their residents from buying insurance out of state, they do in fact impose such protectionist measures,"[7] that restrict competition and stifle innovation.

In New Jersey, for example, regulations—which include the onerous requirement for guaranteed issue*—have driven up the cost of a basic health plan to $1,652 a year. In contrast, a basic health plan in neighboring Pennsylvania will cost around $707, yet New Jersey consumers cannot buy the less expensive alternative from their neighboring state.[8]

Unfortunately, this same scenario plays out across the country. Consumers presented with policies carrying heavy mandates are forced to pay high prices for health care plans that include services they do not necessarily want.

Presently, a 25-year-old male in Texas would pay $248.79 for a health insurance plan that he could get in Alabama for only $77.65 a month.[9] Perhaps these price differences are responsible for the stark contrasts in the uninsured rates in these states. According to the U.S. Census Bureau Survey, in 2006, 23.9 percent of Texans were uninsured compared with only 13.5 percent in Alabama. Not coincidentally Alabama only imposes 19 mandates compared to Texas' 55; suggesting that allowing individuals more choices for their health insurance not only decreases costs, but is critical to combating the growing number of uninsured.

The direction of state regulation in this area has eliminated most of the potential state-to-state competition that would reduce health care costs. Therefore, consumers in many states are left with the choice of buying very expensive health insurance or buying none at all.

INTERSTATE COMMERCE

The economic value of competition between the states cannot be overstated. In fact, its benefits were so evident that our country's founding fathers attempted to guarantee competition between the states in the Constitution. Known as the Commerce Clause, Article 1, Section 8 of the Constitution specifies that,

> "The Congress shall have power... To regulate commerce with foreign nations, and among the several states…"

By granting the federal government control over interstate trade and giving them the authority to regulate competition among the states, the authors of the Constitution intended to prevent states from imposing trade barriers that would stifle interstate commerce.

Allowing interstate trade in the health insurance market would promote jurisdictional competition where states would compete for consumers looking for more affordable health insurance that more accurately reflects their needs. Under our current system of limited competition, states are able to over-regulate health insurance policies without the threat of competing states vying to provide cheaper policies and more personalized plans.

As Larson points out, "When people can—in effect—choose their government (or at least the government where economic activity will occur), then the politicians must be less oppressive."[10] Under a system of competitive federalism, it would be impossible for states to continue imposing regulatory mandates on health insurance and maintain a viable consumer base when individuals have the option of buying a more affordable, personalized policy from another state.

A nationally competitive market would encourage states to deregulate health insurance in an effort to be the state where insurers choose to be chartered and regulated.

In a similar scenario, when the Federal Government allowed financial corporations to choose which state would regulate their business it set into motion a race to lower regulations. As competition to be the primary state regulating banking and lending corporations heated up, six states emerged from the

*Guaranteed issue requires insurers to provide coverage for anyone who applies.

group, leading the way in constructing favorable regulatory environments that attracted companies such as JP Morgan Chase, American Express and Citibank. These states recognized the opportunity to create their own niche in the financial market by loosening their regulatory reign over financial institutions.

If trade between states was allowed, states would have the opportunity to engage in a similarly competitive contest. A battle to be the regulatory state of choice for health insurance companies searching for the state with the most favorable regulatory environment would no doubt ensue.

Once individuals and insurers are allowed to elect the regulatory state of their choice, a race to provide both consumers and providers a more economical regulatory environment will force states to relinquish their regulatory grip on health insurance.

FEDERAL ACTION

U.S. Congressman John Shadegg of Arizona recognizes the limitations that these regulatory trade barriers create and has proposed legislation making it possible for residents in one state to purchase a health insurance policy regulated by another state.

Congressman Shadegg's *Health Care Choice Act* would effectively allow insurers to designate the primary state whose laws would govern their health insurance plans. The insurer would then be able to market and sell that plan to individuals in any state without being forced to adhere to each state's individual regulations. Ned Andrews of the Competitive Enterprise Institute explains that the Act would "[enable] consumers to "opt out" of their home states' coverage mandates—as long as the issuing insurer meets certain federal solvency requirements."[11]

Congressman Shadegg illustrates the advantage of his proposal by comparing the regulatory environment of Kentucky and New Jersey. Under Shadegg's *Health Care Choices Act*, an insurance company might choose to be governed by the laws of Kentucky, where they can provide a 25-year-old male in good health with a policy that meets all of the states requirements, for only $960 a year. The insurer could then market that same policy to individuals across the country, in theory, an individual in New Jersey would save over $4,500 a year by purchasing the policy regulated by Kentucky.[12]

The Act would create a competitive, national health insurance market without creating a federal regulatory structure or increasing taxes. An article from The Heartland Institute explains how the bill would "empower consumers with a multitude of health insurance options so they can make an educated choice of which affordable plan is best for them and their families."[13] Congressman Shadegg has proposed this same bill in the last three legislative sessions, where it was referred to the House Subcommittee on Health, but failed to pass from the committee.

STATE ACTION

Fortunately, it is not necessary for state lawmakers to wait for Congressional action to open competition between states. With the power to regulate insurance at the state level, state lawmakers can lift the trade barriers that restrict interstate competition by changing state law to allow residents of their state to purchase insurance sold in any other state.

Lawmakers in several states have already proposed legislation that would make this possible. Georgia State Senator Judson Hill has presented a bill outlining several market-based reforms, one of which is an initiative to allow insurers authorized in select states to issue policies in Georgia without being forced to provide the mandated health benefits required by Georgia law.

Hill explains that with more competition we would see "[p]remiums stabilize, costs decline, people understand how they can save money without sacrificing quality of care, and insurance and health care become more affordable." In spite of the legislation's broad support and the governor's endorsement, there has been little progress made by the legislature towards its enactment.

A similar bill being discussed in the Colorado Legislature "would allow a Colorado resident to purchase or enroll in a health insurance company licensed to do business in another state, even if the company is not licensed to do business in Colorado, and even if the benefits are different, i.e., more or less, than those benefits required in policies issued by Colorado licensed companies."[14]

Currently four states have pending legislation that would allow residents to buy health insurance approved for sale in another state. All four proposed bills reserve the state's regulatory authority over contractual benefits, such as requirements for prompt payment and the denial of benefits.[15] However, they leave specific policy regulations to the insurers' chosen primary state.

RECOMMENDATION

Texas legislators have already taken some steps to reduce the regulation of health insurance through Consumer Choice Plans, which are available to some Texans and come with fewer mandates. Even still, legislation is filed each session adding new mandates to health insurance, often including additional mandates on the so-called "mandate lite" plans. Those mandates not only drive up the cost of insurance, but also eliminate areas where health plans might otherwise compete based on plan design and quality of product. With the goal of greater competition and the benefits competition brings to consumers, Texas lawmaker should not simply reject new mandates or vigorously defend Consumer Choice Plans from additional regulation, but look for opportunities to create a more competitive health insurance marketplace for Texas consumers.

In order for Texas consumers to reap the benefits of competition, state legislators should begin deconstructing the artificial trade barriers that prevent citizens from buying health insurance that best meets their individual needs.

Section 841.101 of the Texas Insurance Code states:

> 841.101 CERTIFICATE OF AUTHORITY REQUIRED. A domestic insurance company may not engage in the business of insurance in this state, except for the lending of money, without first obtaining from the commissioner a certificate of authority that:
>
> (1) shows that the company has fully complied with the laws of this state; and
>
> (2) authorizes the company to engage in the business of insurance in this state.

As written, this statute restricts consumers' choices to only those insurance plans Texas regulators have approved. State lawmakers looking to give Texans wider choice among insurance plans should amend this section of the insurance code so that insurance companies with a certificate of authority, or equivalent certification, from any state would be able to sell insurance in Texas. The delivery of services and benefits as promised by the insurance plan would be enforced through Texas contract law, allowing Texas consumers exercising this option legal recourse if the insurance plan fails to uphold its' side of the agreement.

Texas has the opportunity to lead the way in creating a more competitive health insurance market while giving Texas consumers more health insurance options. Ultimately, more competition will give Texans more choices in both benefits and prices.

ENDNOTES

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