



Selling Health Insurance Across State Lines

Lessons for States and Questions for Policymakers

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Since 2008, 21 states have introduced legislation to authorize the sale of health insurance across state lines. And while five states have enacted such laws, to date, no insurer has yet to offer coverage pursuant to those laws. Why? Clarifying terms is important since insurers regularly provide products in multiple states, abiding by different consumer protections in different states where they are offered. The proposal to “sell across state lines” would allow insurers to meet the standards of a home state only while offering products in other states. Advocates of the idea argue that cross-state sales would provide more choices for consumers and reduce the cost of health coverage by increasing competition. Opponents counter that such sales would not reduce costs, but instead would disrupt health insurance risk pools and circumvent state insurance regulation and leave consumers unprotected.¹

Historically, states have been the primary regulator of non-group and small group health insurance. In this role, working collaboratively through the National Association of State Insurance Commissioners (NAIC) they set out and enforce rules—including solvency requirements, benefit mandates, premium rating rules, prompt payment to providers, and consumer protections—for the sale of insurance products. The Affordable Care Act (ACA) modified states’ role by establishing federal minimum requirements for private health insurance. These requirements address a broad range of issues related to obtaining and keeping coverage, covered services, premiums, and consumer protection. For example, under the ACA, applicable plans must accept applicants for coverage regardless of health status and cannot establish a waiting period of more than 90 days; they must renew individual plans at the option of the policyholder and group plans at the option of the plan sponsor; they must provide coverage for 10 categories of Essential Health Benefits, including preventive services without cost-sharing; and they must adhere to premium rating rules, spend a certain amount of premium revenue on medical claims, and meet minimum requirements for the actuarial value of plans. States have flexibility in how they implement and enforce ACA requirements, and they also may expand on federal standards.

Prior to the ACA and its establishment of minimum requirements, variation in state rules led to differences in health insurance products and consumer protections that in turn contributed to differences in costs and access to coverage across states. Benefit mandates, designed to address consumer needs, were a factor in increasing the cost of coverage in some states; some states allowed insurers to charge significantly different premiums based on consumers’ health status and other factors; and most states allowed insurers to deny coverage to applicants in the non-group market.² Such differences have been muted by the ACA’s minimum requirements, but if the law were repealed, differences in state regulations would have renewed importance.

The ACA and state actions to sell insurance across state lines

Federal law already permits the sale of health insurance across state lines. Under Section 1333 of the ACA, states may form interstate compacts that allow insurers in one state to sell qualified health plans to consumers in another state. Sales under such Health Care Choice Compacts are permitted as of January 2016, provided the state laws creating the compacts were passed after the ACA was enacted in March 2010. In addition, the Department of Health and Human Services (HHS) must approve interstate sales and certify that health plans provide coverage as least as comprehensive as required under the ACA. Cross-state plans are subject to all applicable laws and regulations of the state where issued as well as to some laws of the purchaser's state related to market conduct, network adequacy, and consumer protection.

To date, no insurer has offered an insurance product under the ACA policy, although five states have passed laws related to selling insurance across state lines.³ Three states—Georgia, Kentucky, and Maine—passed laws after ACA enactment. In 2011, Georgia authorized the sale of non-group insurance policies approved for sale in other states. No insurer has offered a policy under Georgia's law. Also in 2011, Maine passed a law that would allow, beginning in 2014, insurers already licensed in the state to also offer plans approved for sale in Connecticut, Massachusetts, New Hampshire, and Rhode Island. As in Georgia, no insurer has offered a policy under the law. Kentucky took a smaller step in 2012, when it passed a law permitting the state to “explore the feasibility” of creating an interstate compact with contiguous states and allowing the purchase of health plans in participating states. Two states—Rhode Island and Wyoming—passed laws prior to ACA enactment. Rhode Island's 2008 law authorized the creation of a regional health insurance compact to allow the sale of policies issued in New England states. Wyoming's 2010 law allows the sale of health plans by out-of-state insurers and expresses the intent to pursue a multi-state consortium to remove duplicative regulations. Neither of these pre-ACA laws has led to cross-state insurance sales.

In 16 additional states, policymakers have at least introduced legislation related to selling insurance across state lines.⁴ The two efforts that progressed furthest both came after ACA enactment. In 2011 and 2013, respectively, Arizona and Montana passed bills to permit the sale of out-of-state health insurance policies. The states' governors vetoed the bills. In other states, bills were either debated and not passed or introduced and not acted on. Several states considered cross-state policies prior to implementation of the ACA (California, Colorado, North Carolina, Virginia, Vermont, and Wisconsin); one considered legislation after ACA implementation (West Virginia); and several considered legislation both before and after ACA implementation (Indiana, Minnesota, New Hampshire, Oklahoma, Pennsylvania, South Carolina, Rhode Island,⁵ and Washington).

Given both the ACA provision authorizing cross-state sales and state legislative activity that has signaled interest in the idea, why haven't insurers offered products for sale across state lines? A range of key voices—including state insurance officials, the National Association of Insurance Commissioners,⁶ the American Academy of Actuaries,⁷ and health insurance policy experts⁸—have raised a variety of issues with cross state sales, noted below, and emphasized the high cost of creating provider networks in new markets as a primary concern and significant barrier to entry for insurers. Features of the ACA policy also could make cross-state sales unattractive to insurers. Because the ACA's regulatory floor limits the impact of policy differences across states, insurers have less flexibility to exploit differences to create lower-cost products. In addition, federal requirements for states to create an interstate compact and later obtain approval from HHS for cross-state sales may be viewed as burdensome extra steps for states and insurers.

Arguments for and against selling insurance across state lines

Proponents of selling insurance across state lines favor deregulation in the non-group and small group insurance markets, and they argue that cross-state sales would benefit both insurers and consumers. Insurers could offer a wider variety of products, including products that avoid state mandates or other rules; and consumers would have access to lower-cost options that may be better tailored to meet their needs, including basic policies that provide catastrophic coverage or limit benefits for certain services, such as maternity care or mental health services. Proponents also assert that cross-state sales would allow insurers to create national or regional markets for health insurance, with a larger pool of customers to spread risk, potentially benefitting smaller states, smaller health care markets, and health care markets that cross state lines.

Critics of selling insurance across state lines question whether competition would reduce premium costs, and they express concern about potentially negative effects for health insurance markets and consumers. Regarding costs, they point out that benefit mandates and regulations are only two factors that affect insurance premiums. Other important factors, such as health care practice patterns, provider supply and market power, price levels, and consumer demand in local markets, also affect the cost of health care and, in turn, the cost of insurance. Cross-state sales would not in themselves address these factors. Regarding the market for insurance, if low-cost consumers buy inexpensive coverage from lightly regulated states and high-cost consumers buy more generous coverage from states with more extensive benefits and consumer protections, the former group may pay lower premiums, but the latter group would pay higher premiums because of a lack of low-cost consumers to spread financial risk. This risk segmentation could drive premiums to unaffordable levels, destabilize the insurance market, and lead states to loosen regulations to stay competitive. Health plans issued in lightly regulated states may fail to provide adequate financial or consumer protection.

Critics also emphasize that selling insurance across state lines creates practical challenges for insurers and regulators. Because health care is inherently local, setting up provider networks is a costly and significant barrier to entry in new markets. Out-of-state plans may have a small market share, thus limiting insurers' ability to negotiate with health care providers and create an adequate risk pool to distribute costs across insured individuals and groups. Insurers are best able to negotiate provider discounts, and thereby lower premium costs, when they have a significant share of the market. It also is not clear how insurers would price products sold across state lines, given geographic variation in the cost of care due to local differences in practice patterns, provider supply, consumer demand, and prices. Legislators and regulators in different states face a complicated task to establish, implement, and enforce policies that facilitate product sales while ensuring consumer protection. Currently, state insurance departments have leverage to protect consumers in part because they license insurers and approve the products they sell. If consumers buy products issued from another state, their home state regulator may be unable to help them address problems related to marketing, claims payment, or other issues.

Could a different federal policy succeed where the ACA and states have not? Proponents have emphasized deregulation while expressing strong confidence in the power of market forces to drive down costs. The American Health Care Reform Act of 2017 (HR 277) is a specific proposal that would repeal the ACA and advance the sale of health insurance across state lines, among other policy goals. It differs from current law in two important ways. First, because it would repeal the ACA's minimum requirements for health plans and instead lays out fewer requirements to govern cross-state sales, it would renew the varied regulatory context that existed prior to the ACA. Second, because the proposal

would not require the creation of interstate compacts or HHS approval of interstate sales, it may be less burdensome for states and insurers. Whether these or other differences would be enough to spur insurers to offer health plans, providers to participate and consumers to purchase them is not clear, but allowing significant variation in state regulations would increase the potential for market problems from risk segmentation. In addition, insurers would still face barriers associated with developing provider networks, and state policymakers, who have long held regulatory responsibility for the sale of health insurance within their borders, would still face challenges associated with establishing and enforcing laws and regulations to operationalize cross-state sales, stabilize the market for insurance, and protect consumers who buy coverage outside their home states.

Questions for Policymakers:

1. How would consumers be protected? If consumers in one state buy coverage through another, will they know what, if any, consumer protections it includes and what coverage is provided? If consumers have concerns about billing, provider networks or denied benefits how would they submit inquiries and complaints to another state and how would they be resolved?
2. What might be the unintended consequences of sales across state lines? If healthy people purchased in a lightly regulated state and sicker consumers remained in a state's more regulated market what would be the impact on premiums and the viability of those markets?
3. What evidence is there that insurers would take up this opportunity? Could they administer robust networks of providers in distant states?
4. How would the roles of state and federal regulators change? What authority would states have to protect consumers residing in their states?

NASHP invites states to join this discussion to provide more analysis about proposals to sell insurance across state lines. We will provide updates as more states weigh in.

End Notes

1. For useful discussions of this issue, see Linda J. Blumberg, Urban Institute Health Policy Center, "Sales of Insurance Across State Lines: ACA Protections and the Substantial Risks of Eliminating Them," June 2016, p. 1-7, and Sabrina Corlette, et. al., The Center on Health Insurance Reforms, Georgetown University Health Policy Institute, "Selling Insurance Across State Lines: An Assessment of State Laws and Implications for Improving Choice and Affordability of Coverage," October 2012, p. 1-14.
2. Blumberg, p. 2
3. For an accounting of states that have passed or attempted to pass laws related to selling insurance across state lines, see National Conference of State Legislators, "Out of State Health Insurance, Allowing Purchases," at <http://www.ncsl.org/research/health/out-of-state-health-insurance-purchases.aspx>.
4. Ibid.
5. As noted above, Rhode Island also passed a law prior to ACA enactment.
6. The Center for Insurance Policy and Research, National Association of Insurance Commissioners, "Interstate Health Insurance Sales: Myth vs. Reality," available at http://www.naic.org/documents/topics_interstate_sales_myths.pdf.
7. American Academy of Actuaries, "Selling Health Insurance Across State Lines," available at <http://election2016.actuary.org/sites/default/files/Elec-GuideHealthInsStateLines.pdf>.
8. See, for example, Blumberg and Corlette et. al., cited above.

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