Talking Points

Selling Health Insurance across State Lines and Relaxing Rules on Association Health Plans

October 3, 2017

President Trump has said that he will issue an Executive Order with the intent of making it easier for insurers to sell individual, small group and association plan health (AHP) insurance across state lines. Presumably the order would direct regulators to modify rules that the White House says impede the sale of insurance across state borders and thus limit competition that would make coverage less costly.

Proposals to allow the sale across state lines or exempt AHPs from individual and small group regulations are often conflated. What follows are talking points that address these issues in general and then the two proposals separately.

- ACHP appreciates the goal of providing consumers and small businesses more coverage options at an affordable cost. In fact, ACHP members welcome policies which create a robust and competitive insurance market in the states.

- Health insurance, however, is a different type of product than other goods, and the markets in which we sell our products are different from those in which most goods and services are bought and sold:

    - Health insurance in the US has always been a product most closely regulated at home, by state insurance departments.

    - Federal minimum consumer protection standards now apply across all states but issuers of health insurance also must meet individual state laws on licensure, solvency and reserves, as well as additional consumer protections governing the adequacy of provider networks, market conduct, and more.

- Waiving current federal standards related to insurance sold to individuals and small businesses through direct purchase or through AHPs raises concerns about market segmentation and the undermining of consumer safeguards.

- ACHP member plans have been in their communities for many years providing coverage and care to both healthy individuals and people with increased health care needs. By potentially segmenting the risk pool in their regions, proposals to sell insurance across state lines or exempt AHPs from rules otherwise applicable to small group insurance call into question the ability of community-based health plans to continue to provide coverage to their entire populations.

Interstate Sale of Insurance

- Current law permits two or more states to enter into a "health care choice compact" to provide a regulatory structure to sell insurance across states lines. The National Conference of State Legislatures reports that as of December 2016, 21 state legislatures have tried to pass these laws, but only six have enacted them (RI, WY, GA, KY, ME, OK). *As of mid-2017, none of them had entered into agreements with others to sell across state lines*. This is not surprising, as insurers historically have not sought to sell across state borders for many of the reasons noted below.

- Negotiating, establishing and maintaining favorable contracts with providers is a major challenge for health plans in states where they already operate. Out-of-state plans with no current market share in a state would encounter even greater difficulty in establishing a provider network – a significant barrier to market entry.

- Geographic variation in costs is driven largely by the cost of delivering care, not by the cost of regulatory compliance, so that selling insurance across state lines is unlikely to lower health care costs. If a less expensive plan in a lower cost state such as Utah were offered in a higher cost state like New York, premiums would have to be adjusted for health care costs in New York.

- Selling insurance across state lines would likely lead to unstable and segmented risk pools: plans operating in states with fewer regulatory requirements could aggressively select the healthiest risk in a more highly regulated state. Healthier consumers might have greater access to cheaper and less comprehensive coverage but sicker individuals and people with pre-existing conditions would face significantly increased costs and less choice.

- All consumers could be harmed as they would not easily know where to appeal adverse plan decisions or file disputes. Even if they did, the other state's regulators and elected officials would have little incentive to assist an individual who is not a resident of their state.

- While ACHP plans vary from closed HMOs to fully contracted networks, all have invested significantly in developing close, productive working relationships with local providers – a key to their success. Allowing insurers domiciled in states with fewer regulations to compete against one whose successful business model relies upon a local presence would create an uneven playing field and undermine the stability of ACHP member plans and the health care gains of their communities.

Association Health Plans

- The Executive Order may direct the revision of regulations to enable health insurance sold through AHPs to be treated under federal law as large group insurance coverage instead of individual or small group coverage.[1]

- The rationale for AHPs is that, by banding together, many small employers from the same industry, trade group or business coalition would gain the same bargaining power as that of large employers in negotiating with insurers. Proponents also say that the economies of scale that insurers would gain by selling through AHPs would reduce administrative costs. With the resulting lower premiums, more small businesses would buy coverage for their workers, lowering the rate of uninsured.

- Congress has considered numerous proposals in the past to exempt AHPs from federal and state guaranteed issue, rating, benefit, risk adjustment and other insurance market requirements.

- Independent assessments (including from the Congressional Budget Office) of these past proposals concluded that AHPs would not produce notable coverage increases. For every small firm that might gain cheaper health insurance, many more small firms and their employees would find their insurance to be more costly, leading some to drop the coverage.

    - This is because AHPs do not give their members the same negotiating leverage as large employers have with health insurers. Unlike a large employer, an AHP is a voluntary, self-selected group whose members can enroll and dis-enroll at any time. Also, an AHP is not a natural large group but an aggregation of many small firms and individuals, with all of the inherently higher risks of insuring such entities. Premiums will reflect not the group size but the expected use of medical services by individual members. Administrative savings are also likely to be limited.

- Exempting federal insurance rating rules for AHPs by treating them distinctly from individual or small group plans would invite risk segmentation, adversely affecting the non-AHP small group market. Even if the Executive Order still prohibited the use of health status and industry type as rating factors, lower risk groups would likely obtain more favorable rates within the AHP market and higher risk groups would cluster in the non-AHP market; the resulting adverse selection would drive their premiums increasingly upward.

- If the Executive Order exempts AHPs from the Essential Health Benefits and other federal consumer protections, AHPs could gravitate to plans sold by insurers domiciled in the least robustly regulated states. Small businesses with employees needing comprehensive benefits would end up being further segmented into higher-cost plans, again leading to a spiraling of adverse selection.

- Interstate sale of AHPs would share the same pitfalls as interstate sale of conventional individual and small group health insurance. An AHP selling insurance that is licensed in one state would be unable to ensure access for its members to participating health care providers in those states in which the insurer has little or no provider relationships. Small businesses with healthy employees would seek AHP plans at the expense of community-based plans, harming those plans and the people they serve.

- If the Executive Order extends ERISA provisions to AHPs, states will be preempted from setting solvency, reserve and other requirements that protect consumers from insolvencies and fraudulent business practices.

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[1] The preamble to the September 6, 2011 final rule on *Rate Increase Disclosure and Review: Definitions of "Individual Market" and "Small Group Market"* clarified that AHPs would have to comply with the ACA's consumer protections. https://www.gpo.gov/fdsys/pkg/FR-2011-09-06/pdf/2011-22663.pdf