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Selling Health Insurance across State Lines Harms Consumers

One recurring idea in proposals to replace the Affordable Care Act (ACA) is to allow sale of health insurance across state lines. Simply put, expanding plans' ability to sell across state lines would make circumstances worse for consumers, increase the prevalence of "junk insurance," and undermine the ability of states to impose consumer protections under current state law.

After reviewing the evidence, we determined that the sale of health insurance across state lines is either unnecessary or problematic. While it is touted as needed to enable insurers to sell on multiple markets, this is something they can already do if they choose to, and few insurers have made that choice. More concerning, another consequence of this policy would be to lower consumer protection standards, as explained below.

Plans Can Already Sell Across State Lines, but Opt Not To

- Health plans are already permitted to sell products in every state in the country. The only restriction is that insurance sold in each state must comply with local laws and be licensed by the state regulator. Plans that do not sell in a given state do so by choice, most often because they do not consider the market attractive given existing competitors and difficulty establishing provider networks..
- Current federal law does not restrict across-state-lines health insurance arrangements.[i] In fact, the ACA already allows for interstate compacts, if there are inter-state agreements about the rules such plans would operate under, and featuring a federal consumer protection floor.
- A study of states that passed laws to allow cross-state insurance sales found that not a single out-of-state insurer opted to do so.[ii]

Would it Create a Race to the Bottom?

- Due to the interconnectedness of the healthcare marketplace, it is difficult to predict the precise ramifications for each region of our country. However, it is likely that selling across state lines would do many of the following:
    - Weaken consumer protections,
    - Reduce access for those with prior health problems,
    - Decrease benefit coverage,
    - Limit how insurance regulators in the consumer's home state can assist customers within that state and sow confusion among consumers who need help,[iii]
    - Create major challenges in developing robust networks of doctors and hospitals, and
    - Increase premiums for less-healthy enrollees.
- If given the option, health plans will likely cluster in the states with the weakest consumer protections, as has happened with credit card companies.[iv] The National Association of Insurance Commissioners compares this to allowing banks to choose their own state regulator, which they identify as a major cause of the recent financial crisis.[v]

Consumers May Find Their Only Choices are Unacceptable

- Health plans established in a state with a low consumer protection threshold may sell products designed to produce lower premium prices rather than high quality benefit designs that best manage consumers' overall costs. For example, consumers who purchase insurance based in a state other than their own may be attracted to the lower premiums but surprised to find limited or extremely limited provider options in their home

area. Insurance that leaves consumers under-insured or unable to access needed services is unacceptable.

- Unlike other products and services, health insurance is complicated and can be overwhelming to consumers as they shop for options. It can be extremely difficult for consumers to distinguish among many options, so they prefer to choose from a more limited number of good quality choices.

Plans Sold Across State Lines May Create Unstable Risk Pools

- Healthy consumers are likely to flock to bare-bones insurance products sold by plans established in states with less rigorous requirements, leaving health plans that offer more substantial plans with the sickest and highest-cost enrollees, potentially throwing the market into volatility and a "death spiral"[vi] for those types of comprehensive insurance products.

Flexible Regulatory Requirements are Unlikely to Lower Premiums

- Pre-ACA studies—when benefit designs were more diverse than they may now be—found that most benefit mandates added little cost to premiums (although there were exceptions).[vii]
- The factors that most profoundly impact premium rates are not addressed by cross-state sale of insurance.[viii] Indeed, economists believe differences in state regulatory requirements have a very minor impact on costs.

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[i] The ACA's section 1333 permits states to form healthcare choice interstate compacts to allow insurers to sell policies in any state participating in the compact. Two or more states may enter into compacts under which one or more insurance plans may be offered in the states, subject to the laws and regulations of the state in which it was written. The insurer is subject to the market conduct, unfair trade practices, network adequacy, consumer protection, and dispute resolution standards of any state in which the insurance was sold.

[ii] Robert Wood Johnson Foundation, *Selling Health Insurance Across State Lines: An Assessment of State Laws and Implications for Improving Choice and Affordability of Coverage*, October 2012; Kaiser Health News, *Sounds Like A Good Idea? Selling Insurance Across State Lines*, May 11, 2016.

[iii] *Id*.

[iv] The Washington Post, *Selling Across State Lines: A Terrible, No Good, Very Bad Health-Care Idea*, February 2010.

[v] National Association of Insurance Commissioners and The Center for Insurance Policy Research, *Interstate Health Insurance Sales: Myth vs. Reality*.

[vi] The Robert Wood Johnson Foundation, *Does the Patient Protection and Affordable Care Act Permit the Purchase of Health Insurance Across State Lines?*, August 2010. Time, *The Trouble with Replacing Obamacare with High-Risk Pools*, November 22, 2016. Health Affairs, *Don't Let the Talking Points Fool You: It's All About the Risk Pool*, March 15, 2016.

[vii] Eastern Economic Journal, *The Effect of Health Insurance Benefit Mandates on Premiums*, March 2013. Minnesota Department of Health: Health Economic Program, *Mandated Health Insurance Benefits and Health Care Costs*, July 2001.

[viii] Eastern Economic Journal, *The Effect of Health Insurance Benefit Mandates on Premiums*, March 2013.