

Does the Patient Protection and Affordable Care Act Permit the Purchase of Health Insurance Across State Lines?

Timely Analysis of Immediate Health Policy Issues

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The Patient Protection and Affordable Care Act (PPACA) does include provisions that will allow the purchasing of health insurance across state lines. However, these provisions are structured somewhat differently than earlier proposals advocated by some members of Congress and Senator John McCain during his 2008 presidential run. The differences are intended to protect states with more consumer protections from having those regulations undermined by cross-state sales of health insurance.¹

Under the earlier proposals, insurers could sell coverage to residents of any state, with the insurer complying with insurance regulations in the state in which the company was based, instead of the regulations of the state in which the consumer lived. Several researchers analyzed these proposals within the context in which they had been proposed—that is, without other insurance market reforms or significant subsidization of coverage for the low-income population.²

All three analyses reached similar conclusions. State laws vary considerably in how strictly they regulate the premium rating and rules of issue governing the sale of health insurance. As a result, many insurers could, and likely would, base their companies in the least regulatory states. In this way, insurers could continue to medically underwrite coverage and deny applicants based on health status, even in states that otherwise require guaranteed issue

Interstate sales of insurance are allowed under the new law, but regulations provide greater consumer protections than earlier proposals.

and community rating. Insurers could sell policies with limited covered benefits, even in states that mandate the sale of more comprehensive coverage. Any insurer in a state maintaining regulations requiring broader pooling of health risk would attract the higher-cost enrollees unable to obtain coverage elsewhere, compromising the viability of those insurance pools and leading states into a regulatory race to the bottom. State insurance regulations could be expected to be eliminated to a great degree, and states would eradicate many, if not all, state benefit mandates. In addition, as Kofman and Pollitz pointed out, legislation that prohibits states from enforcing their own laws and relies upon states to enforce laws in other states raises a host of questions regarding constitutionality and practical enforcement.

While these policies, absent other insurance regulatory reforms, could provide lower-cost insurance options for healthier and younger individuals living in more highly regulated states, the savings would come at the price of increasing insurance costs for older adults and those in less than perfect health. Insurance could also be expected to become less

comprehensive across the board in such a context, leading to higher out-of-pocket burdens on those using health care services.

The provisions for selling insurance coverage across state lines included in the new health care reform law will be different in important ways from these earlier proposals. The interstate compact provisions in PPACA that will permit some cross-state sales of insurance are intended to create competition among health plans across state lines, streamline regulation, reduce health insurance costs, and increase the choice of products offered to consumers.³ The two most important differences between PPACA compact provisions and earlier interstate sales provisions are that:

- (1) PPACA requires all states to comply with a minimum level of insurance regulation; consequently, insurers cannot avoid the federal minimums by domiciling in one state and selling in another; and
- (2) Cross-state sales will not be permitted in a state unless that state affirmatively joins a compact with one or more other states.



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However, even within an interstate compact, some states are likely to have laws that are stronger than the federal minimum requirements and stronger than other states within the compact, and these stronger regulations could be preempted. Depending upon the specific differences across states, such compacts might then lead to significant risk-pooling consequences.

States considering entering into interstate health insurance compacts under PPACA should carefully consider the potential risk-pooling consequences of doing so.

Summary

Interstate sales of health insurance are permitted under PPACA, but only between states entering into explicit

joint insurance compacts developed for this purpose. The law's minimum levels of insurance regulations, which will apply to all states and its limitation of cross-state sales to those joining compacts, will provide greater consumer protections than would have been the case under prior proposals.

Notes

¹ This response is based in significant part on analysis contained in Linda J. Blumberg and Karen Pollitz, "Cross-State Risk Pooling under Health Care Reform: An Analytic Review of the Provisions in the House and Senate Bills" (Washington, DC: Urban Institute, 2010).

² M. Kofman and K. Pollitz, "Health Insurance Regulation by States and the Federal Government: A Review of Current Approaches and Proposals for Change" (Washington, DC: Georgetown University Health Policy Institute Report, 2006), <http://www.allhealth.org/briefingmaterials/HealthInsuranceReportKofmanandPollitz-95.pdf>; Linda Blumberg and John Holahan, "An Analysis of the McCain Health Care Proposal" (Washington, DC: Urban Institute, 2008), http://www.urban.org/UploadedPDF/411755_mccain_health_proposal.pdf; John Bertko, Len Nichols, and Elizabeth Carpenter, "Across State Lines Explained: Why Selling Health Insurance across State Lines Is Not the Answer" (New America Foundation, 2008), http://www.newamerica.net/files/nafmigration/Policy_Paper_Across_State_Lines_Explained.pdf.

³ David M. Herszenhorn, "Prescriptions; Let Health Insurance Cross State Lines, Some Say," *New York Times*, February 14, 2010.

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