

WebMemo



Published by The Heritage Foundation

No. 1164
July 17, 2006

The Health Care Choice Act: Eliminating Barriers to Personal Freedom and Market Competition

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While interstate commerce in goods and services is routine in virtually every other area of the national economy, such as banking and financial services, it is largely frustrated in the health care sector by law and government regulation. For individuals and families, this means that they are not able to secure the kind of coverage they want at the prices they wish to pay. The Health Care Choice Act (H.R. 2355 and S.1015), sponsored by Representative John Shadegg (R-AZ) and Senator Jim DeMint (R-SC), would amend current law to allow for interstate commerce in health insurance plans while preserving states' primary responsibility for the regulation of health insurance. These changes would broaden and intensify competition among health plans and medical providers, encourage a serious review of existing health care regulation in the states, and expand the choice of millions of Americans of more affordable health insurance plans. The result: reduced health care costs and greater access to health care coverage.

What the Bill Does

The bill would reform the individual health insurance market by allowing individuals and families who reside in one state to buy a more affordable health insurance plan domiciled or licensed in another state. Likewise, health insurance plans would be able to sell their policies to individuals and families in every state of the union, just as other companies do in the sale of a wide variety of goods and services in every other sector of the economy.

The legislation carefully balances the interests of the states where health insurance is bought and sold. States where health insurers are licensed to sell their plans retain the primary authority to regulate the health insurance product. These rules usually govern such items as payment of premiums, claims processing, and appeals and grievances. The bill also establishes a federal floor for fiscal solvency requirements, based on National Association of Insurance Commissioners standards, for plans competing in interstate commerce. When health plans are sold to residents across state lines, the purchasers would be entitled to their state's rules enforcing consumer protection, such as its fraud and abuse laws, rules governing unfair claims, or financial or solvency protections. Moreover, under the terms of the bill, any insurer who sells in another state would still be subject to that state's premium taxes and any assessments for state high-risk pools, which cover costly or uninsurable persons. A key advantage of the legislation is that it would not preempt, undermine, or override innovative state health care reforms; it would instead give ordinary Americans greater access to different types of health care coverage.

This paper, in its entirety, can be found at:
www.heritage.org/research/healthcare/wm1164.cfm

Produced by the Center for Health Policy Studies

Published by The Heritage Foundation
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Improving the Health Care System

The Health Care Choice Act would substantially improve the functioning of health care markets and, through greater breadth and intensity of competition, the delivery of health care services from medical professionals.

Broader and More Intense Competition. State health insurance markets are increasingly concentrated and less competitive, often dominated by a few large insurers. Market consolidation has been accelerated by mergers and acquisitions, as well as by rigid state government policies that have discouraged carrier participation. In the individual market, insurance companies' participation varies, and many markets are dominated by fewer and fewer number of large carriers. In many cases, this consolidation has been facilitated by misguided state government policy. Likewise, in the small group market, the declines are dramatic. In Maryland's highly regulated small group market, for example, between 1995 and 2004, the number of participating insurers dropped from 37 to 9; two of the largest health insurers now account for the enrollment of 94 percent of covered lives; and 58.8 percent of small firms do not enroll their employees in that market.¹

Dysfunctional state insurance markets are often characterized by higher costs and fewer choices for individuals and families. Interstate commerce, with new carriers and innovative options, would give these persons a new set of options for health care coverage that they do not have today. The resulting competition would also introduce new market pressures to control costs.

Greater Personal Choice and More Affordable Coverage. For most Americans, the terms and conditions of health insurance are determined by the decisions of employers and health plan administrators. The level of choice available to workers and their families is largely correlated with the size of

the firm, with dramatically less choice for individuals who work for small firms.

Not surprisingly, premiums sharply vary from state to state, reflecting the economic conditions in the state, the prevailing wage rates and medical practice patterns, and the impact of state law and regulatory policies. Among 50 largest U.S. cities, monthly premiums for individual, self-only policies range from a low of \$54 in Long Beach, California, to \$334 in New York City.² While local conditions would obviously continue to influence the local premium price of a plan licensed in another state, there is still a great opportunity for individuals and families to secure more affordable health policies through a new national market.

Beyond price is the more important issue of personal freedom. In the individual market, the content of a health benefits package is often determined by state government officials, who determine which benefits, medical procedures, and practitioners must be reimbursed. State laws and regulations include, nationwide, 1824 benefit mandates, according to a recent study by the Council for Affordable Health Insurance.³

State legislators say these benefit mandates serve a socially beneficial purpose, but they are often imposed for narrow political reasons. As Alain C. Enthoven, Professor of Management at the Graduate School of Business at Stanford University, observed: "Often these mandates are legislative responses to the demands of narrow interest provider and consumer constituencies, such as disease specific advocacy groups or nurses associations, for instance. The mandates allow legislators to accede to the demands of the more vocal and powerful groups without having to vote for the taxes to pay for them. Often these benefits are not what the employment groups that purchase health insurance would choose to buy on their own (if they were, there would be no need for the mandates)."⁴ Simi-

1. The Maryland Health Care Commission, "Short and Long Term Strategies to Ensure the Viability of the CSHBP and The Small Group Market," Presentation of the Commission staff, September 15, 2005.
2. EHealthInsurance.com, "The Most Affordable Cities for Individuals to Buy Health Insurance," June 28, 2005, p. 7, at <http://www.ehealthinsurance.com/content/ReportNew/06.28.05MostAffordSinglesReportFinal.pdf>.
3. See Merrill Matthews, Director, Council for Affordable Health Insurance, testimony before the Subcommittee on Health, Committee on Energy and Commerce, U.S. House of Representatives, June 28, 2005, p. 4.

larly, many individuals would also not choose to purchase the benefits mandated by state officials.

Benefit mandates can also be ethically controversial, such as artificial contraception and *in vitro* fertilization. Under current market arrangements, even if individuals object to certain procedures as unethical or immoral, they are nonetheless forced to finance them through their health insurance premiums. Especially with the growth of new medical procedures and therapies that are ethically controversial, these challenges to personal conscience are certain to grow and become increasingly divisive.⁵ However, with an open market stretching from coast to coast, individuals could buy what they want, including health benefits and medical procedures that are compatible with their ethical, moral, and religious convictions.

Promoting Value. Today, health care competition is almost exclusively confined to local and state markets. States regulate health plans within their borders, and likewise doctors and other medical professionals are licensed and certified by state officials and practice within local networks. As Michael E. Porter of the Harvard Business School and Elizabeth O. Teisberg of the University of Virginia, observed: “Despite variation in quality and cost, geographic competition even nearby providers is severely circumscribed. Most patients are actively discouraged from seeking and securing the best value care, either because their health plan’s choices are geographically constrained or because their doctor refers locally. The problem is most acute in rural areas, where there is rarely any local competition at all. But even when multiple providers are readily available, the mind-set of keeping the patient in the provider’s own system usually prevails.”⁶

The rapid expansion of information technology, combined with a growing demand for greater transparency of information on the quality and price of medical procedures and performance, is a welcome development. All of the available information on price, quality, and performance is useless, however, unless individuals and families can act on it directly by controlling the flow of dollars in the health care system.

With interstate commerce in health plans, large national health plans and large networks of providers would compete among themselves to offer greater choice, drive costs down, and improve quality and efficiency. While larger pooling arrangements would surely reduce adverse selection and administrative costs in the insurance system, an added benefit of national plan competition would be the emergence of new value-focused networks of providers. This could accelerate broader competition among clinics, physician practices, hospitals, and specialized medical facilities.

Conclusion

The Health Care Choice Act would expand personal choice and create robust market competition across state lines within the individual health insurance market. It would make health insurance more affordable for millions of Americans and help individuals and families purchase plans that best comport with their wants, needs, and values. Moreover, the emergence of a national market for health plans would be a major step toward intensifying competition among doctors, hospitals, and other medical professionals, broadening consumer choice significantly.

Health insurance markets that limit choice and restrict competition are the equivalent of industrial-age dinosaurs. In an age of rapidly expanding infor-

4. Alain C. Enthoven and Laura A. Tollen (eds.), *Toward a 21st Century Health System: The Contributions and Promise of Prepaid Group Practice* (San Francisco: Jossey-Bass, 2004), p. 238.
5. Such complex issues range from the appropriateness and level of care at the beginning and end of life, including physician-assisted suicide, to the use of therapies based on embryonic stem cell research, cloning, and genetic engineering. For a discussion of this problem, see Robert E. Moffit, Ph.D., Jennifer A. Marshall, and Grace V. Smith, “Patients’ Freedom of Conscience: The Case for Values-Driven Health Plans,” Heritage Foundation *Backgrounders*, No. 1933, May 12, 2006, at www.heritage.org/research/healthcare/bg1933.cfm.
6. Michael E. Porter and Elizabeth Olstead Teisberg, *Redefining Health Care: Creating Value Based Competition and Results*, (Boston: Harvard Business School Press, 2006), p. 48.

mation technology, consumers demand information on medical goods and services. Americans should be free to act directly on that information with their dollars, controlling the flow of dollars in the health care system, even across state lines. There is no legitimate reason why health insurance should be insu-

lated by old laws and outdated regulation from the normal market forces that govern virtually every other sector of the American economy.

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