

POLICY BRIEF

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REGULATIONS AND HEALTH INSURANCE IN KANSAS

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Executive Summary

We hear a lot about how government should play a role in providing health insurance to the uninsured. According to some polls, as many as 61 percent of Americans believe government should play more of a role in providing health care to the uninsured. Yet the central problem in the health care debate is not the uninsured but rather the cost of health insurance. One of the main reasons health insurance costs more than it should is due to government regulation of insurance and especially the burden of political mandates on health insurance companies.

This policy brief focuses attention on health insurance mandates and how they have contributed to increased costs for health insurance, and thereby, acted as impediments to insuring more Americans. It also focuses on the situation in Kansas compared to the rest of the country when it comes to insurance mandates and other regulations for health insurance.

Introduction

Senator John McCain (R-Az) put forward one of the bolder proposals for health care reform offered in this year's presidential campaigns. McCain is calling for the opening up of the health insurance market to allow the purchase of insurance across state lines. Currently due to a highly regulated health insurance industry, state insurance commissioners control who is allowed to market and issue insurance products in their respective states. A Kansas citizen can purchase a car from a dealer in Texas, but cannot purchase health insurance from a Texas company unless it has been approved by the Insurance Commissioner. Why can't individual consumers purchase health insurance across state lines? Better yet, given the consumer-driven success of the internet, why not be allowed to purchase health insurance over the internet?

Current Regulatory Climate

Part of the answer lies in the regulatory climate which governs health insurance. Most Americans get their insurance from a large employer. Such plans, whether funded by the



employer or funded by the employee, are subject to federal regulation known as the Employee Retirement Income Security Act (ERISA).

ERISA was enacted in 1974 and was designed as a protective measure to set minimum standards for insurance and retirement benefits offered by the private sector. It does not mandate that private companies offer insurance; rather it makes certain that plans offered are safe for the employee and that those responsible for maintaining such plans meet certain standards of conduct. States do not have any regulatory authority over large companies under the ERISA legislation.

States do, however, have authority to regulate the rest of health insurance plans. These include both the small-group market (under 50 employees) and the individual market. One major change since the enactment of ERISA is that the large group market has declined (though it still makes up the majority of those who have health insurance) while the small group and individual insurance markets have grown. Thus, state regulation increasingly is a more powerful impediment to health insurance reform than at any other time.

Merrill Matthews of the Council for Affordable Health Insurance (CAHI) wrote in *The Wall Street Journal* that certain states “have all but destroyed their individual health-insurance markets with over-regulation.” He points to states like New York, New Jersey and Massachusetts as major culprits. Massachusetts, for example, passed a Connector plan mandating the purchase of health insurance. It is little wonder that costs rose as a result.¹

The National Federation of Independent Business advocates that insurance mandates be reduced but recognize the problems inherent in fighting against them. “Elected representatives find it difficult to oppose any legislation that promises enhanced care, especially when lobbied by persons who have been personally affected by the issue in question.”² Locally, small business organizations such as the Wichita Independent Business Association and the Topeka Independent Business Association have recommended reducing or eliminating coverage and provide insurance mandates. “Insurers should not be expected to lead the fight against mandates and other laws that drive up policy costs. Mandates are generally *good* for insurance companies. Mandates run up the costs of insurance.”³

Small businesses are adversely affected by the regulatory climate concerning insurance in the state of Kansas. Small businesses make up a large portion of the Kansas economy and health care costs are one of the biggest issues employers face when it comes to employment issues and core profitability. Eliminating or substantially reducing mandated benefits required of insurance companies would go a long way towards reducing costs.

Mandates are a recent development in health insurance. In the early 1970s, according to a study by economist Gail Jensen, there were virtually no insurance mandates; by 1991 there were 850 across all the states. As of 2007, according to the Council on Affordable Health Insurance, there are as many as 1,900 mandates in the states and their numbers are certain to grow as new procedures, such as bariatric surgery, and new providers become more important to the health care system.⁴

Kansas legislators in the 2008 session were considering adding a mandate for bariatric surgery—the weight loss surgery which has been effective for obese patients who receive it.



Patients who receive the surgery, having exhausted every other effort to lose weight and to improve their health, testified to a Senate committee about the impact the surgery would have on their lives and how mandating that insurance company's pay for the surgery is something the legislature should do. Jim Barnett, a Republican Senator favored such a mandate but nothing came of the proposal in the legislative session.⁵

But what if insurance companies were mandated to provide the benefit? Blue Cross Blue Shield of Kansas testified against it, arguing that the surgery has not yet been found effective and that costs of the procedure were high. If insurance companies were forced to pay for this new benefit, would they still consider Kansas a reasonable place to do business? That is part of the problem with mandates—forcing insurance companies to offer a mandated benefit to the community is not good business. While it may help insurance companies bottom line, in that they would simply charge more for the policies they write, it would not be beneficial to the wider community and to those already with insurance who would pay higher premiums.

Ways to Improve Choice in Health Insurance

Kansas has not typically experienced the high costs of health insurance premiums compared to states such as California and Massachusetts; however, Kansas still possesses a highly regulated health insurance market which increases costs of insurance more than is necessary. Reducing regulation could lower the costs of insurance. One positive step in this regard has been the insurance commissioner's education of consumers regarding Health Savings Accounts (HSAs), providing information to individuals and small businesses to purchase these money saving health insurance products.

Still there are ways to free up the insurance market and help consumers find more affordable coverage. In his *Wall Street Journal* article Matthews focuses on a bill sponsored by Arizona Republican Representative John Shadegg, The Health Care Choice Act. This proposal would create a "competitive, 50-state market for health insurance."⁶ While there would be a new government program created and states could still regulate insurance products it would nonetheless allow consumers to pick and choose from insurance plans that best fit their health care needs, just as they pick and choose from auto and life insurance products not sold in their state.

There are a couple ways that state policymakers can make health care more affordable and open up more competitive markets for insurance:

- Avoid guaranteed issue. Guaranteed issue occurs when regulations require insurers to sell an insurance policy to anyone willing to buy it regardless of one's health. Guaranteed issue forces low risk purchasers into a pool with high risk purchasers of health insurance, contributing to higher costs. It tends to raise the costs of insurance for everyone in the pool and forces insurance companies out of offering plans in a state. Not surprisingly the states with the highest insurance costs and the largest number of uninsured citizens allow guaranteed issue.



- Limit insurance mandates. CAHI has studied the growth of health insurance mandates in the states; as of 2007 states had more 1,900 mandated benefits and providers. Mandates are enacted by state legislatures to require coverage for some disease or treatment previously uncovered by private health insurance. Mental health coverage or maternity are common examples. What the growth of mandates in the states has done is increase government involvement in health care. This, in turn, increases costs associated with health care coverage. A 1999 study by economists Gail Jensen and Michael Morrissey of the Health Insurance Association of America showed that “as many as one in four individuals who are without coverage are uninsured because of the cost of health insurance mandates.”⁷

What is the big problem with mandates? It forces insurance carriers to provide benefits for people who don't want them yet are still forced to pay for them. “Mandating benefits is like saying to someone in the market for a new car, if you can't afford a Lexus loaded with options, you have to walk. Having that Lexus would be nice. . . .but drivers with less money can find many other affordable options; whereas when the price of health insurance soars, few other options exist.”⁸

How Kansas Compares

Kansas, when compared to other states, falls somewhere in the middle when it comes to promoting a competitive insurance environment. Kansas allows guaranteed issue of insurance in the small group market (listed as firms with between 2 and 50 employees), as does every state. To compensate for the increased costs associated with this, Kansas provides a tax credit for small group employers--one of only eight states to do so. Kansas is also one of only thirty states where health savings accounts are offered; a variety of small businesses throughout the country have subscribed to HSAs in order to reduce health care costs.⁹ While seemingly innovative when it comes to such policies, the Kansas Insurance Department has a reputation of being a difficult place to promote new health insurance products.

Kansas has thirty seven insurance mandates, eighteen catalogued as benefits, fourteen provider benefits and five for covered persons. Out of the eighteen benefit mandates only five are mandated by fewer than half the states (bone mass measurement, diabetes self-management, mastectomy, mastectomy stay, maternity). Out of that group only bone mass measurement is mandated by fewer than fifteen states. In the provider category Kansas is more generous, with mandates covering nurse anesthetists, oral surgeons (only seven states mandated oral surgery), pain management specialists (only two states), pharmacists (only four states), physical therapists, and physician assistants.

The thirty-seven insurance mandates make Kansas about average when compared to the other fifty states. Idaho, as of 2007, had 16 mandates while Minnesota had 63. As Merrill Matthews concluded, “the people of Idaho aren't dying in the streets for lack of mandates.”¹⁰

Mandates are political. Groups lobby politicians for such mandates and depending on the support for extending them they are passed by state legislatures who respond to the inputs they receive from various interest groups.



Conclusion

Why can't consumers determine what coverage is important to them and purchase a plan accordingly, rather than having a politician or the government determine it for them? Obviously there are some mandates which would have to be in all plans (mental health coverage) but why would a thirty year old male need to pay for breast reconstruction? Or maternity coverage?

The best way to improve this situation is to allow individuals the right to purchase health insurance across state lines. If health insurance is too costly in Kansas and a better policy can be found in Idaho which fits someone's needs (and meets the requirements of the Insurance Department for a product saleable in the state) then why shouldn't a consumer be able to purchase such a policy? That might make Kansas insurers attractive to consumers in other states if they offer products which individual consumers may want.

Such a situation will not work for everyone—individuals with preexisting conditions or chronic illnesses will have difficulty getting insurance (Kansas does have a high-risk insurance pool which could be strengthened monetarily for such individuals). But it might just work for those struggling to purchase health insurance in places where mandates and guaranteed issue have made insurance less affordable. That would strengthen the health insurance market and provide more coverage for the uninsured without additional government intervention in health care. It would also allow for competition between states for who offers a business environment conducive to competition rather than regulation.

About the Author



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Notes:

¹ Merrill Matthews, "A Health Insurance Solution," *The Wall Street Journal*, 17 December 2007, page A 18.

² NFIB Talking Points on Insurance Mandates (July 2006).

³ Kansas Small Business Coalition, *2008 Guide to Kansas Small Business Issues*, January 2008, pages 10-17. Available at <http://www.wiba.org/pdf/legislative/2008SmBus> (accessed 27 June 2008).

⁴ Gail A. Jensen, "State Mandates on Private Insurance," *CATO Regulation: The Review of Business and Government*. Available at <http://www.cato.org/pubs/regulation/reg15n4g.html> (accessed 3 July 2008); see, also, Victoria Craig Bunce, JP Wieske, and Vlasta Prikaszy, "Health Insurance Mandates in the States 2007," Council for Affordable Health Insurance. Available at http://www.cahi.org/cahi_contents/resources/pdf (accessed 24 June 2008).

⁵ Christine Metz, "Senator: Insurance Should Cover Weight Loss Surgery," *Lawrence Journal-World* (3 February 2008).

⁶ Matthews, Op. Cit.

⁷ Ibid.

⁸ Ibid.

⁹ Data from Kaiser Family Foundation, <http://www.statehealthfacts.org/comparetable> for data comparing Kansas with 50 states.

¹⁰ Matthews, Op. Cit.

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