

Geographic Monopolies  
Vs.  
Choice & Competition  
in Health Insurance Regulation:  
Starting A Market-Driven  
Race to the Top

Tom Miller

American Enterprise Institute

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# Bending the Curve of State-Based Regulation

## Historical Analogies

- Delaware Corporate Chartering
- Dual Banking
- Regional Compacts for Interstate Banking
- Risk Retention Act
- Surplus Lines Insurance
- Technological End-Runs
- “Association” Plans, Health Insurance Trusts

# Reforming Health Insurance Regulation: The Wrong Ways

- Top Down Federal Preemption (Short Term vs. Long Term)
- Optional Federal Chartering
- Leaving Regulatory Vacuums
- Aiming Too High, and Too Low
- Federal Solvency Regulation

# Reforming Health Insurance Regulation: The Right Ways

- Harnessing Competitive Federalism
- Potential, as well as Real, Competition
- More than One, Less than Fifty-One  
Regulatory Models

# Reforming Health Insurance Regulation: The Right Ways

- Narrow Federal Statutory Fixes

Insurer Domicile Rule

Bolstering Enforcement of Contractual Choices

Limited Carve Outs

Uniform Disclosure Rules

# Reforming Health Insurance Regulation: The Right Ways

- Relying Less on New Federal Legislation
  - Choice of Forum/Choice of Law Clauses
  - Regulatory Due Deference
  - Regional Compacts
  - Uniform Certificate of Authenticity Application (UCAAA)

# Reforming Health Insurance Regulation: Safeguards

- Thorough Disclosure
- One Primary (Lead) Regulator, with Home State Consequences & Accountability
- Revenue Incentives for Greater Market Share
- Multi-state Solvency Arrangements (Guaranty Funds, NAIC)
- Consumer Protection (Kept Local?)
- Distribution of High-Risk Pool Funding

# Reforming Health Insurance Regulation: Finding Supportive Constituencies

- Individual Internet Purchasers
- Federal Tax Credit Purchasers
- Multi-State Voluntary Purchasing Groups
- Consolidated State Regulation for Self-Insured Employers (Post-PBOR ERISA Threats??)
- Portability Potential

# Reforming Health Insurance Regulation: Barriers & Limiting Factors

- Desk drawer regulation
- Inertia
- Agents
- Demand from insurers
- Bring out your disease groups

# Havighurst, Law & Contemporary Problems, 2002

- Political market for consumer protection regulation of health care
- Consumers/voters with greater preferences for regulation are the most aware, influential, and politically active members of the population
- Informal coalition of upper-middle-class voters and special health industry interests seeking to use high standards to eliminate low-cost competition and increase demand
- Income-inelasticity of health care (higher-income people spend higher % of incomes on health services)
- Most consumers/voters believe insurers or employers pay the added costs of regulated quality and covered services

# Keys to Competitive Federalism in Health Insurance Regulation

- Regulatory dialectic of innovation happens anyway, just not as well
- Regularize channels for arbitrage and adjustment
- Reshuffling the deck of cards (couldn't hurt)
- Opening up opportunities for more, and more valuable, variation (diversity & experimentation)
- Balancing greater availability against perceived stability
- Insurers act as pass-thru agents offering different brands of regulation embedded in product
- Better regulation, not “No” regulation
- Regulators have to meet a market test, too
- Any willing insurer, for any willing purchaser?