Weekly Checkup

Selling Insurance Across State Lines

CHRISTOPHER HOLT | MARCH 8, 2019

This week, the Trump Administration issued a request for information (RFI) regarding the interstate sale of health insurance. The publication is generating buzz because many conservatives have long called for the sale of health insurance issued in one state to consumers in other states. But just **what is the sale of health insurance across state lines, and what impact would it have?**

In 1945, Congress passed the McCarran-Ferguson Act, explicitly ceding insurance market regulations to state governments unless enacted federal legislation explicitly declares its intent to preempt state freedom in this matter. While the 1974 Employee Retirement Income Security Act (ERISA) reasserted federal regulatory authority over self-insured employer health insurance, the small-group and individual markets continued to be the purview of the states. The Affordable Care Act (ACA) superseded state individual and small group market regulation with its essential health benefits package, but states were still free to enact their own laws and regulations where such regulations exceeded the requirements of, or did not conflict with, the ACA.

Today, states continue to have authority over individual and small-group insurance. Some states have more restrictive rules around their insurance markets, while others are more lax. This regulatory diversity is one—but only one—factor that contributes to disparities in insurance premiums from one state to another. **Some argue that if consumers were free to purchase any insurance product they wanted, regardless of where it was issued, we would see increased competition and access to cheaper premiums.** Consumers effectively could circumvent their home states' regulations and the price pressures they bring.

Under current law, however, states are free to allow out-of-state issuers to sell products in their state, if they so desire. **There are no existing federal prohibitions on the interstate sale of health insurance.** And, in fact, we have seen several examples of states either opening their doors to out-of-state insurance products or entering into agreements with neighboring states to allow sale of insurance products between them. **Most states, though, have been unwilling to open fully their insurance markets**. Further, where allowances have been made, no insurers have taken advantage.

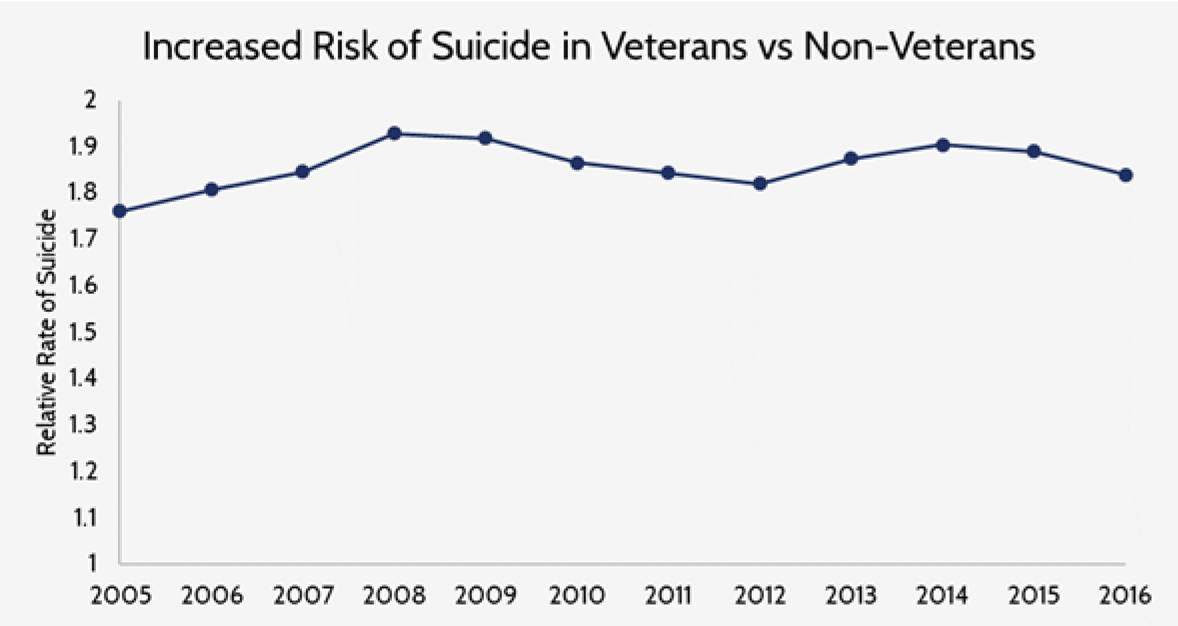
There are a couple of reasons why an insurer in one state might not want to sell a product in another. For one, if they aren't already active in both states, **they won't have the network of providers in place** to deliver care. Further, labor costs are a significant factor in the cost of insurance, so even if the insurer can establish a network of providers, **the cost of providing care won't change simply because the insurer is located in another state**. On the other hand, if the insurer is already selling insurance in both states, and its products are priced to account for those geographical and regulatory cost variations, **why would they undercut their products in a more expensive market by selling products from another cheaper state?** There are also issues arising from disputes over coverage. If a purchaser in one state takes issue with the insurance product sold to them from another, **which state's regulatory apparatus adjudicates?**

Ultimately, there are no federal roadblocks to the sale of insurance across state lines. **There are, however, a number of factors that make it unattractive to many states and to potential insurers.** The only way for the federal government to act that *might* bring real competition and notable premium savings would be to preempt entirely states' ability to regulate their insurance markets and instead create, in effect, a national insurance market. Such an approach, however, runs afoul of the federalist inclinations of many of this policy's advocates.

CHART REVIEW

Kate Dixon, Health Care Policy Intern

Since 2005, veterans have been nearly twice as likely to die by suicide than their non-veteran counterparts, as the chart below shows. On Tuesday, President Trump signed an executive order aimed at reducing these rates of veteran suicide. The effort, dubbed the President's Roadmap to Empower Veterans and End a National Tragedy of Suicide (PREVENTS) Initiative, will create a task force led by Veterans Affairs Secretary Robert Wilkie. The PREVENTS Initiative directs the task force to create a roadmap for state and local veteran organizations to raise awareness of the issue, and to improve coordination of suicide prevention research.



FROM TEAM HEALTH

Eakinomics: Surprise Billing

In Wednesday's Daily Dish, AAF President Douglas Holtz-Eakin discusses various solutions to surprise health care bills. Any effective solution will likely spread the cost of surprise bills across the system while taking steps to prevent them from occuring, Holtz-Eakin argues.

Testimony: Promoting Competition To Lower Medicare Drug Prices

Yesterday, Douglas Holtz-Eakin testified on Medicare drug prices before the Committee on Ways & Means Subcommittee on Health. He argued that while the term “rising drug costs” is riddled with ambiguity, demand is increasing, and the only way to reduce prices in the face of greater demand is to increase competition.