Don’t Leave It to the States

Leaving Health Insurance Oversight to State Regulators Is a Dangerous Idea

SOURCE: AP/Douglas Healey

An office for health insurance giant Aetna Inc. in Hartford, Connecticut.

By David Balto, Stephanie Gross | October 22, 2009

Congress is considering as part of health care reform legislation repealing parts of the McCarran-Ferguson Act, which exempts insurers from federal antitrust laws and leaves states to regulate the entire industry. Opponents of strong federal oversight for health insurers believe we should leave enforcement and regulation to the states. Yet it is clear that most states lack the resources to effectively police the huge health insurers that dominate our markets. Health insurers are governed by a hodgepodge of state laws. Enforcement is inconsistent at best, and those states with insurance monopolies are often the most vulnerable.

State insurance commissioners are charged with a wide variety of tasks and do not necessarily have the capacity to fully address the problems that their states’ residents are experiencing. Certain states might have active or even aggressive enforcers, while residents of a neighboring state might not enjoy any meaningful protection at all. Karen Pollitz, professor at the Georgetown University Health Policy Institute, observed in testimony before the House Oversight Committee that, “State regulators necessarily focus primarily on licensing and solvency. Dedicated staff to oversee consumer protections in health insurance are limited.” Health insurance is not necessarily a high priority; Pollitz noted that, “In four states, the insurance commissioner is also the fire marshal.”

Lack of adequate oversight and enforcement means that health insurers enjoy the freedom to engage in the anticompetitive, fraudulent, and deceptive practices that are being directly targeted by health care reform. They raise premiums while offering poorer coverage, deny coverage to inflate profits, and maintain effective monopolies. Indeed, in those states where state insurance commissioners have failed to enforce consumer protection violations or aggressively regulate the industry, the market for health insurance is concentrated to the point that consumers have little choice but to purchase insurance from insurers with unpunished consumer protection violations.

Insurance commissioners simply have not taken action against health insurers' anticompetitive conduct in any state. And most markets across the country have essentially become monopolies: The American Medical Association reports that 96 percent of metropolitan areas have highly concentrated markets for health insurance, using the Department of Justice and Federal Trade Commission's definition of a concentrated market. A handful of states have taken action against health insurers' consumer protection violations. Based on our review of 33 states, over one-third brought no significant consumer protection actions in the past five years, and another four states were only involved in multistate enforcement actions. Unfortunately, those states that need an active insurance regulator the most—states dominated by a single insurer—rarely bring enforcement activity. There are a few exceptions, but there is a strong inverse connection between consumer protection enforcement and market concentration. States such as California that have a more competitive market actively enforce consumer protection violations. In contrast, the states with the most concentrated markets for health insurance, where many residents hardly have a choice of insurer, have taken no major consumer protection enforcement actions.* The state Departments of Insurance in six of the seven most concentrated marketsfor health insurance—including Rhode Island, Alabama, Maine and Montana—have taken no significant consumer protection actions against health insurers in the past five years. Those who are lucky enough to live in Florida or California enjoy strong consumer protection enforcement against health insurers. Florida's Department of Insurance has taken 31significant actions in the past five years, and California's Department of Managed Health Care has brought 170 actions in that time, with potential relief exceeding $1 billion. These examples demonstrate the need for strong enforcement; these egregious and deceptive practices are national in scope and do not stop at state borders. California and Florida are exceptions—activity by most of the country's Departments of Insurance has been erratic over the past five years, with the result that the largest health insurers enjoy a stronghold over the market in most states and can engage in deceptive and unfair practices with impunity.

State Departments of Insurance can more effectively protect their residents when adequate resources and enforcement are aligned, preventing the harmful practices that have made insurance companies infamous and encourage competition between insurers. Yet simply wishing that every state across the country could turn into a California or a Florida will not achieve the level of consistent, adequate protection across the country that a federal enforcer would provide. That is why health care reform must include a comprehensive set of consumer protections and aggressive federal enforcement to make sure these reforms work.

*Information from states' Department of Insurance websites. Information not available for all states.

To speak with our experts on this topic, please contact:

Print: Katie Peters (economy, education, and health care)

202.741.6285 or kpeters1@americanprogress.org

Print: Christina DiPasquale (foreign policy and security, energy)

202.481.8181 or cdipasquale@americanprogress.org

Print: Laura Pereyra (ethnic media, immigration)

202.741.6258 or lpereyra@americanprogress.org

Radio: Anne Shoup

202.481.7146 or ashoup@americanprogress.org

TV: Andrea Purse

202.741.6250 or apurse@americanprogress.org