

Dissenting Views **H.R. 2355, the “Health Care Choice Act”**

H.R. 2355, the “Health Care Choice Act”, is a serious threat to the individual health insurance market. This legislation would allow health insurance companies to be licensed in one State but then sell policies in any of the other 49 States without meeting the other State’s consumer protection and insurance laws. Democrats strenuously objected to the legislation on a number of grounds and offered a series of amendments to correct its fundamental flaws.

Erosion of Consumer Protections

One of the most serious concerns with this legislation is that it would erode State consumer protections. States would be powerless to stop out-of-State insurance companies from selling coverage in their State which did not meet important State consumer and benefit protections. The legislation would undermine access to coverage and benefits for all consumers in the individual insurance market, and it would particularly hurt those with either existing medical needs, such as diabetics, cancer patients, pregnant women, and asthmatics, or those who develop a need for care. It would allow insurers to craft policies that serve only the healthy and avoid the sick either by excluding them outright from coverage or by pricing policies out of reach.

Numerous advocacy groups expressed concerns with H.R. 2355.

The American Diabetes Association indicated: “The Association is concerned that by permitting insurers to be licensed in only one State, H.R. 2355 could cause the end of guaranteed-issue individual health insurance policies. Many people with diabetes rely on this type of policy when employers do not offer coverage, or when they are self-employed. Under these policies, consumers can never be turned down for health insurance coverage because of their health status. However, insurers in other States without these types of provisions can and usually do deny coverage to individuals with diabetes because of their pre-existing condition.”¹

In a letter to Representative Ted Strickland on H.R. 2355, the National Mental Health Association noted: “As you know, mental illnesses are the leading cause of disability and premature death in this country. Absent strong laws, discriminatory health-insurance practices that limit people’s access to needed mental health care are widespread across the country. Enactment of this legislation would, in our view, be a setback for many people with mental illnesses who have won protections against such discrimination under State laws.”²

¹ June 24, 2005, letter from the American Diabetes Association to Representative John B. Shadegg.

² July 19, 2005, letter from Michael Faenza, National Mental Health Association, to Representative Ted Strickland.

The March of Dimes stated in testimony submitted to the Committee: “We have strong reservations about any proposal that would have the effect of putting at risk existing State coverage protections for pregnant women, infants and children. In our judgment, health insurers should not be allowed to sell coverage that excludes maternity and pediatric benefit protections approved by individual States. As illustrated by experience with maternity coverage in the individual insurance market, permitting exclusion of basic benefits can have the perverse result of making such benefits unaffordable or even unavailable.”³

FamiliesUSA said: “Under the Health Care Choice Act, the rights and protections granted by many States will be undercut by a small number of States that have fewer - or no - protections.”⁴

The National Partnership for Women and Families stated: “Insurers could select the State with the most lenient rules, and thereby circumvent State laws that protect consumers from unfair rates and rate hikes. These insurers would be exempt from critical consumer protections such as guaranteed coverage for individual with preexisting conditions, and required coverage of critical health benefits like mammography screenings and preventive care.”⁵

In an effort to protect such individuals from harm under this legislation, Democrats offered a number of amendments that would have prohibited insurers from discriminating against these groups by excluding needed benefits or excluding them from coverage. Amendments were offered that would require insurers operating in a State to comply with that State’s laws regarding access to coverage and benefits for individuals with diabetes, mental illness, pediatric cancer, and breast cancer, as well as to protect access and benefits for pregnant women and children. Amendments were also offered to protect State laws regarding access to prescription drug coverage and ensuring access to immunizations for children. Unfortunately, all of these amendments were defeated by the Majority.

Creation of a Regulatory Void; Increase in Fraud

The bill would strip regulatory authority from State insurance commissioners and prevent them from protecting residents of their State from unlicensed insurance companies. Section 2976 exempts a health insurer from complying with the covered laws of a State, such as consumer protections (i.e., access to emergency care, access to specialty care); benefit protections (i.e., diabetes coverage, maternity coverage, mental illness coverage, etc.); protections on premiums that can be charged; fraud and abuse laws (other than those that meet the narrow definition of

³ March of Dimes testimony submitted to the Committee on Energy and Commerce on H.R. 2355, June 28, 2005.

⁴ Statement of Ron Pollack on H.R. 2355, the “Health Care Choice Act” for the record before the Committee on Energy and Commerce, June 28, 2005.

⁵ Statement of the National Partnership of Women and Families on H.R. 2355, “National Health Care Advocate Opposes the Health Care Choice Act”, June 28, 2005.

fraud and abuse in the legislation); protections on access to coverage (i.e., guarantee issue and renewability, pre-existing condition protections); and other laws relating to insurance. For these laws, if a consumer had a problem with an unlicensed insurance policy, he or she would have to request that an out-of-State insurance commissioner take action, if that other State even had such protections. The insurance commissioner in the consumer's home State could not assist them.

Democrats offered a number of amendments to address this matter including: requiring the State insurance commissioners to certify that a policy licensed in another State would not cause harm to in-State consumers before such a policy could be sold in the State; allowing a State to enforce laws against an unlicensed insurance plan if the licensing State did not take action; and allowing a State to ban unlicensed bad actors from the State if the company was found to violate required laws. All of these amendments were defeated on near party-line votes.

The removal of regulatory oversight by this legislation will provide an environment ripe for unscrupulous actors to enter States and defraud consumers. Rather than simplify insurance regulation, this legislation would make it more complex because of the varying State and Federal standards that would apply to companies operating without being licensed in that State. The insurance laws of the State where the company is licensed would apply in most instances, but in some instances, such as in the case of certain fraud laws or external appeals, the State laws where the consumer lives would apply. In other cases, a Federal standard would apply. For example, there is a Federal standard for premium reclassifications, enforced by the licensing State, and a Federal standard for external appeals in instances where a State has no policy, enforced by that State.

Consumers would be required to sort through the different layers of regulation to determine to whom and where certain provisions applied and where they would go to enforce them. Today, consumers know to turn to their State office for assistance. Under this legislation, insurers could frequently change the State in which they are licensed. Consumers would have to canvass different States to find out where their policy was regulated at the time their problem occurred. Moreover, having to navigate a State insurance department hundreds of miles away in another State would create significant obstacles for consumers seeking to file complaints. Thus, the legislation establishes operational and practical barriers to filing and investigating complaints. The end result would likely be little oversight of insurers.

Moreover, State insurance departments are not equipped to serve residents of other States. In addition, State insurance departments do not have the resources to enforce or even monitor the conduct of insurance companies beyond its borders in a State where the insurer is not licensed. Under this legislation many consumer complaints or problems would go unaddressed and insurance companies would get away with bad practices with no consequences.

Insufficient Consumer Information

Adding to Democrats' concerns about fraud is the lack of information required to be provided to consumers about the policies licensed in another State they would be purchasing. The legislation, at section 2976(c), requires a brief notice to be provided to consumers indicating which State laws and regulations govern that policy. Democrats offered an amendment to improve the information provided to consumers by insurance companies in order to ensure that individuals were making an informed choice in purchasing a policy not licensed and regulated primarily by their State.

The amendment would have required insurers offering coverage in a State where they were not licensed to provide an explanation in easy to understand language of any variance of that policy from the mandated benefits, consumer protections, fraud protections, or premium protections that would be provided under the State's laws where the insurer is not licensed that would not apply. In addition, the amendment would have required that each time an insurer changed the State in which it was licensed, it must notify policy holders in writing of the change, and must include a summary of any material changes in law and regulation between the old and new primary jurisdiction as well as where to contact in the State where the plan is licensed to file a complaint.

Finally, the amendment would have required insurers to maintain a website (and provide information in each policy on how to access that site) containing: (1) copies of each insurance policy form sold in other States where it was not licensed; (2) copies of or links to the insurance law and regulation used in the State where it was licensed; (3) a discussion of the rating approach used by the licensing State including whether it varies by duration and how it approaches closed blocks of business; and (4) information on how the applicant or policy holder can file a complaint with the insurance regulator of the licensing State. This amendment, like all other Democratic amendments, was defeated.

Erosion of Choice

H.R. 2355 is likely to lead to an erosion of choice for consumers as a result of a number of different factors. Insurance companies that currently offer more diverse policies including broader benefits and using less restrictive underwriting rules would find it difficult to continue offering that coverage as unlicensed out-of-State insurers moved into the market. These out-of-State policies would siphon off the healthy "good risks" into bare-bones policies, raising costs in more comprehensive health insurance policies. Ultimately, this would create a competitive disadvantage for any insurer that wished to (or was required by law to) meet more comprehensive State consumer protection standards. Consumers would find that policies that offered more comprehensive coverage and protections were no longer available or were unaffordable.

To address this matter, Democrats offered an amendment which would require any insurer wishing to offer a policy in a State where it was not licensed (and thus did not meet the States consumer protections, benefit protections, access, rate or other requirements) to also offer a second policy that did meet all of the State standards. This would ensure that consumers were, in fact, able to decide which type of policy best met their needs by guaranteeing that both State-regulated and out-of-State unlicensed policies were offered to consumers. The amendment was defeated.

Evisceration of State Legislative Authority

Because this legislation would allow insurance companies to circumvent State laws by operating without a license in that State, it usurps the legislative authority of State legislatures. By allowing insurance companies to choose which State to be licensed in, this legislation would block the ability of State legislatures to enact laws that had stronger protections than those of another State. There would be no incentive for States to pass laws to protect residents if the insurer could just register elsewhere to avoid it. Rather than foster a climate of continual improvement in industry practices, it would encourage companies to choose as its primary State the one with the lowest standards. Democrats objected to the Federal Government supplanting State powers in this manner, particularly as the end result would be fewer protections for consumers. An amendment to return authority to State legislatures was also defeated.

Summary

In short, we have grave reservations about H.R. 2355 and its effect on millions of Americans who obtain their health coverage in their State's individual health insurance market. This bill, which was brought directly to the full Committee for consideration after only one hearing in the Subcommittee on Health, clearly would allow health insurance companies to avoid important State consumer protections and as such avoid serving individuals with medical needs. The legislation also sets up a confusing and inadequate regulatory structure that is certain to lead to an increase in fraudulent health insurance companies operating across the Nation. States, under the legislation, will have little ability to enforce their laws for their residents against plans operating without a license in that State. And, licensing States will not have the resources or potentially even the desire to assist out-of-State consumers experiencing problems with an out-of-State insurance company.

For all of these reasons, we strongly oppose this legislation.

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