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## Allowing the Purchase of Health Insurance from Out-of-State Insurers

Updated: May 2011

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Insurance firms in each state are protected from interstate competition by the federal McCarran-Ferguson Act (1945), which grants states the right to regulate health plans within their borders. Large employers who self-insure are exempt from these state regulations. Thus there is a patchwork of 50 different sets of state regulations, and the cost for an insurer licensed in one state to enter another state market is often high. A growing number of state legislators are interested in whether some states allow or facilitate the purchase of health insurance across state boundaries or from out-of-state regulated companies. NCSL's state health insurance research and tracking shows a growing number of states and legislators considering this idea during the past four years and continuing to the present (listed below).

Note that "self-insured" or "self-funded" health coverage usually offered by large employers (especially with 500+ employees) is not regulated by states and is guided by the federal ERISA law, administered by the U.S. Department of Labor.

Federally authorized "health savings accounts" and accompanying High Deductible Health Policies (HDHPs) are exempt from much of state regulation, including some state mandates.

- **Rhode Island** is the only state with a law, enacted in 2008, to create a regional health insurance compact.
- **Wyoming** is the first state, in March 2010, to enact a law based on the free-market model but also including a multi-state compact related to federal health reform.
- At least **16 states** have discussed or examined cross-border health insurance filed legislation since 2007. (*As of 7/14/2010*)

**Origins and history:** All 50 states regulate health insurance and have done so for decades. While laws vary from state to state, they generally provide a structure that combines business regulation, employer incentives and consumer protections and obligations. The variations can be extensive, especially mandates or required benefits.

**State-based proposals for out-of-state health purchases before federal health reform:** Sixteen states have considered laws to allow this policy; of those, 13 states have cross-border health insurance bills filed in the 2009-2010 current sessions, although some are active no longer. In most cases the proposed state laws differ markedly from the newly enacted federal health reform law.

- **Arizona** (HB 2776 of 2008 - did not pass committee)
- **California** (AB 1904, SB 65 h of 2010 - did not pass committee)
- **Colorado** (HB 08-1327 of 2008, HB 09-1256 of 2009; HB 10-1163 of 2010 - did not pass committee)
- **Georgia** (S 309, S 407, H 1184 of 2010 - did not pass)
- **Indiana** (H 1152 of 2010 - did not pass)
- **Maine** (S 540 of 2007, H 230 of 2009 - did not pass committees)
- **Minnesota** (HF 3609, HF 4154, HF 4218, HF 4229, SF 3582, SF 3824 - did not pass)
- **New Hampshire** (H 1431, H 1585, S 452 of 2010 - did not pass)
- **North Carolina** (2009-2010 - did not pass)
- **Oklahoma** (S 1290, S 1346, S2 2010 - did not pass)
- **Pennsylvania** (SB 508 of 2009-2010)
- **Rhode Island** (Signed into law, 2008)
- **South Carolina** (SB 986 of 2010 - did not pass)
- **Vermont** (H 697 of 2010 - did not pass; also resolution HJR 39 opposed out-of-state purchasing- adopted)
- **Wisconsin** (A 540 of 2009-2010 - did not pass)
- **Wyoming** (Signed into law, 2010)

**State-based proposals for out-of-state health purchases after federal health reform:** Seven states have considered laws to allow this policy after the passage of health reform. The following bills do not require that the coverage be governed by the laws of the state in which the policies are "issued or written" in terms of insurance mandates. (*As of*

April 19, 2011)

- Arizona (SB 1593 - pending)
- Georgia (HB 47 - signed into law, 2011)
- Kentucky (HB 494 - did not pass)
- New Hampshire (HB 327, SB 150 - pending)
- Oklahoma (SB 57 - pending)
- South Carolina (SB 185 - pending)
- West Virginia (HB 2801 - failed, SB 419 - failed)

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## Federal Health Reform Legislation and Actions

Under the Patient Protection and Affordable Care Act (H.R. 3590), Section 1333 permits states to form health care choice inter-state compacts and allow insurers to sell policies in any state participating in the compact. Two or more states may enter into compacts under which one or more insurance plans may be offered in the such states, subject to the laws and regulations of the state in which it was written.

The insurer would remain subject to the market conduct, unfair trade practices, network adequacy, consumer protection, and dispute resolution standards of any state in which the insurance was sold, be licensed in each state, and notify consumers that it was not otherwise subject to the laws of the selling state. HHS would have to approve interstate insurance sales, certifying that the coverage would be as least as comprehensive as that sold through the exchange, provide coverage and cost-sharing protections at least as affordable and cover at least as many residents as coverage under Title I, and not increase the federal deficit.<sup>1</sup>

**The Current Role of Federal Law.** Until March 2010 there was no federal law that, in general, either allowed for or prohibited cross-border purchasing of health insurance – only state laws regulate health insurance policies that are “fully insured” – and sold throughout the small employer and individual insurance market in all 50 states. The federal reform law enacted in March 2010 (see above) takes full effect in January 2016.

**Can states go further?** The idea of states allowing free-market sales across state lines, outside of federal regulation is an untested proposition. This is especially true during the transition period prior to the effective dates of the federal reforms spelled out in section 1333 of the Patient Protection and Affordable Care Act.

Also see “Federal Legislation and Action” below.

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## Background and Opinions on Out-of-State Insurance

*(NCSL is not responsible for opinions for or against this or other state legislation)*

The American Legislative Exchange Council recently approved as model legislation the [Health Care Choice Act for States](#) (ALEC members only). The following is ALEC’s advocacy opinion: *This legislation would allow “for the purchase of health insurance across state lines. Critics say that this kind of competition between states and insurance providers will yield a “race to the bottom” in health care. But with legislation like the Health Care Choice Act for States, consumers may purchase basic policies with as few as 13 mandates (in Idaho) or they can also choose to purchase gold-plated coverage (for example, in Minnesota, which has 62 mandates).*

- For sample model legislation see ALEC’s Health Care Choice Act: American Legislative Exchange Council, 12/1/07, <http://blog.spn.org/id.835/detail.asp>.

The following is a description excerpted from a 2008 trade association report by CAHI: *Out-of-State Insurance— Access to affordable coverage can vary significantly from state to state, depending on state regulation. For example, community rating and guaranteed issue have made policies in the individual market unaffordable except for the wealthiest residents of Maine, Massachusetts, New Jersey and New York. If residents living in states with unaffordable health insurance could purchase policies currently being sold in other states, they too would have access to affordable coverage.*

- Source: [http://www.cahi.org/cahi\\_contents/resources/pdf/StateLegislatorsGuide2008.pdf](http://www.cahi.org/cahi_contents/resources/pdf/StateLegislatorsGuide2008.pdf)

**Interstate Health Insurance Sales: Myth vs. Reality**

Some have suggested that allowing interstate sales of health insurance policies will make coverage more affordable and available. In reality, interstate sales of insurance will allow insurers to choose their regulator, the very dynamic that led to the financial collapse that has left millions of Americans without jobs. It would also make insurance less available, make insurers less accountable, and prevent regulators from assisting consumers in their states.

- Source: National Association of Insurance Commissioners. [http://www.naic.org/documents/topics\\_interstate\\_sales\\_myths\\_1003.pdf](http://www.naic.org/documents/topics_interstate_sales_myths_1003.pdf)

**NCSL Policy: "Insurance Regulatory Modernization"**

"The National Conference of State Legislatures (NCSL) is committed to state regulation of the business of insurance.

Insurance serves as the cornerstone of the economy. It provides economic security for individuals and their families and allows businesses to manage the risks that are inherent in economic activity. Whereas banking and securities are about access to capital and risk-taking, insurance is a guarantee. It is a legal promise—steeped in state tort and contract law—to provide benefits if and when they are due, often years into the future.

For more than 150 years, the states have proven that they can successfully and effectively protect consumers and ensure that promises made by insurers are kept. As a different kind of financial service, insurance requires a different kind of regulation that the states are best suited to provide. State regulation ensures that rates are fair, adequate and not excessive; that policy language is clear and includes what it should; that insurers are financially sound; that claims are paid; that consumers are informed, and that their complaints are investigated and resolved. " [\[full text\]](#)

## Laws and Legislation

State / Year	Signed Laws
Georgia 2011 Signed Law	<b>H 47</b> by Ramsey M (R) Relates to individual health insurance coverage, so as to authorize insurers to offer individual accident and sickness insurance policies in the state that have been approved for issuance in other states; provides for legislative findings; provides for a definition; provides for minimum standards for such policies; allows insurers authorized to transact insurance in other states to issue individual accident and sickness policies in the state. <i>(Enacted by House and Senate; signed into law by the governor , 5/13/11)</i>
Rhode Island 2008 Signed Law	<b>S 2286</b> by Sen. Sheehan (D) Amends the Health Insurance Market Expansion Act; provides for establishing a regional health insurance market with other New England states to expand opportunities for regional insurers to offer insurance in the state; includes health insurance corporations, health maintenance organizations, nonprofit hospital service corporations and nonprofit medical service corporations; provides for a study of laws to enable insurers licensed in other states to do business in the state without separate licensure. <i>(Filed and Enacted; signed into law, 6/26/08)</i> <i>NOTE: This structure resembles the federal Health Reform law enacted in March 2010. It may be an early example of applying state and federal regulation to a new type of insurance policy.</i>
Wyoming 2010 Signed Law	<b>H 128</b> by Rep. Simpson (R) Authorizes the sale of health insurance by out-of-state insurers; provides for more limited regulation of policies; provides for oversight by the insurance commissioner; provides for cooperation by the insurance commissioner with other states with consistent insurance laws; specifies legislative intent to pursue a multi-state consortium to enter into reciprocal agreements to reduce health insurance costs through removal of duplicative regulation. <i>(Passed House and Senate; signed into law by governor as Chapter No. 86, 3/11/10)</i>
State / Year	Proposed Bills - Not Enacted
Arizona 2008 bill	<b>H 2776</b> by Rep. Crump (R) Arizona considered a proposal (HB 2776) which would allow out-of-state health insurers to transact business in AZ if they are subject to the jurisdiction of another state's insurance department.  Relates to purchase of health or sickness insurance; would provide that insurers that issues policies, contracts, plans, coverages or evidences of coverage and that are domiciled outside of this State may transact health or sickness insurance in this State if the insurer provides evidence to the Director that while providing health or sickness insurance the insurer is subject to the jurisdiction of another State's Insurance Department. <i>(Filed and held in House Health Committee; Failed Adjourned, 2/20/2008)</i>
2011 bill	<b>S 1593</b> by Sen. Barto (R) Allows foreign insurers to issue policies relating to health or sickness coverage in Arizona. <i>(To Governor, 4/15/11)</i>
California 2010 bills	<b>A 1904</b> by Ass. Villines (R) Allows a carrier domiciled in another state to offer, sell, or renew a health care service plan or a health insurance policy in this state without holding a license issued by the Department of Managed Health Care or a certificate of authority issued by the Insurance Commissioner. Exempts the carrier's plan or policy from requirements otherwise applicable to plans and insurers providing health care coverage in this state if the plan or policy complies with the domiciliary state's requirements.

	<p><i>(Filed and sent to Assembly Committee on Health; did not pass committee, 4/20/10)</i></p> <p><b>S 65 h</b> by Sen. Huff (R) Allows a carrier domiciled in another state to offer, sell or renew a health care service plan contract or a health insurance policy in the State without holding a licensure issued by the Department of Managed Health Care or a certificate of authority issued by the Insurance Commissioner; exempts the carrier's plan contract from requirements otherwise applicable to plans and insurers providing health care coverage. <i>(Filed and sent to Senate Committee on Rules; did not pass committee, 2/16/10)</i></p>
Colorado 2008 bill	<p><b>H 1327</b> by Rep. Gardner (R) "A Bill Concerning Access To Affordable Health Insurance Products For Colorado Residents Through The Elimination Of Certain Regulatory Restrictions That Increase The Costs Of Health Insurance Products For Consumers." Allow Colorado residents to purchase, and a health insurance carrier, whether or not the carrier is subject to Colorado insurance laws and regulations, to sell in Colorado, a health insurance product that is lawfully sold, offered, or issued in another state without subjecting that insurance product to the requirements of Colorado insurance laws and regulations. <i>(Filed and sent from HOUSE Committee; Postponed indefinitely, 03/10/08)</i></p>
2009 bill	
2010 bill	<p><b>H 1256</b> by Rep. Acree (R) Authorizes the commissioner of insurance (commissioner), on behalf of the state, to enter into multistate agreements with other states for the purpose of allowing a health coverage issuer (issuer) doing business in another state to offer, sell, or issue in Colorado an individual health coverage plan (plan) that is regulated by another state. Requires the commissioner, in making the determination to enter into a multistate agreement. The agreement would delineate each state's responsibilities with regard to enforcement of applicable laws, etc. The bill is modeled after H.R. 2355 from the 109th Congress, by Congressman Shadegg. <i>(Filed and sent from HOUSE Committee on APPROPRIATIONS; Postponed indefinitely, 04/03/09)</i></p>
	<p><b>H 1163</b> by Rep. Acree (R) Authorizes the Commissioner of Insurance, on behalf of the state, to enter into multistate agreements with other states for the purpose of allowing a health coverage issuer doing business in another state to offer, sell, or issue in this State, an individual health coverage plan that is regulated by another state; requires the issuer is required to submit to the Commissioner evidence of its financial viability. <i>(Filed and sent from HOUSE Committee on State, Veterans and Military Affairs; Postponed indefinitely, 1/20/10)</i></p>
Georgia 2010 bills	<p><b>S 309</b> by Sen. Hill Ju (R) Relates to authorization and general requirements for transaction of insurance, so as to provide for legislative intent; authorizes the purchase of health insurance policies from out-of-state insurers; provides for notices; authorizes the Commissioner of Insurance to conduct certain market conduct and solvency examinations; authorizes the Commissioner of Insurance to adopt certain rules and regulations; provides for appeals of claims. <i>(Filed and sent to Senate Insurance and Labor Committee; did not pass by end of session, 1/13/10)</i></p>
	<p><b>S 407</b> by Sen. Hill Ju (R) Relates to individual health insurance coverage; provides for legislative intent; provides definitions; authorizes the Commissioner of Insurance to authorize insurers to offer individual medical and surgical health insurance policies in Georgia that have been approved for issuance in selected other States. <i>(Filed and sent to Senate Insurance and Labor Committee, From House Committee on Insurance: Favorably referred as substituted; did not pass by end of session, 4/21/10)</i></p>
2011 bill	<p><b>H 1184</b> by Rep. Ramsey M (R) Relates to individual health insurance coverage; authorizes insurers to offer individual accident and sickness insurance policies in Georgia that have been approved for issuance in other States; provides for legislative findings; provides for minimum standards for such policies; provides for certain notices; provides for examinations of such insurers; authorizes the Commissioner of Insurance to adopt rules and regulations. <i>(Filed and sent to House Insurance Committee; From Senate Committee on Insurance and Labor: Favorably reported; did not pass by end of session, 4/14/10)</i></p>

	H 47 by Ramsey M (R) - see signed law, above)
Indiana 2010 bill	H 1152 by Rep. Brown T (R) Relates to individual out-of-state health insurance; allows an accident and sickness insurer that is licensed in certain other states, and is not licensed in Indiana, to issue or deliver an individual policy of accident and sickness insurance to an individual resident of Indiana without complying with other Indiana insurance law. <i>(Filed and sent to Committee; did not pass by end of session, 1/16/10)</i>
Kentucky 2011 bill	H 494 by Rep. Moore (R) Would require the state Department of Insurance to authorize out-of-state insurers to offer health benefit plans in Kentucky; authorizing the state to conduct market and solvency examinations of such out-of-state companies; and authorizing the exemption of Kentucky state-mandated health benefits from out-of-state health benefit plans. <i>(Filed and sent to House Committee on Banking and Insurance, 2/15/11; did not pass)</i>
Maine 2007 bill	S 540 of 2007 by Sen. Smith (R) Permits out-of-state health insurers, which are referred to as regional insurers in the bill, to offer their individual or group health plans for sale in this State if certain requirements of Maine law are met, including minimum capital and surplus and reserve, disclosure and reporting and grievance procedures. <i>(House adopts Majority Committee Report; Ought not to pass, 6/15/07)</i>
2009 bill	H 230 of 2009 by Rep. McKane (R) Permits out-of-state health insurers, which are referred to as regional insurers in the bill, to offer their individual or group health plans for sale in this State if certain requirements of State law are met; includes minimum capital and surplus and reserve requirements, disclosure and reporting requirements and grievance procedures; defines regional insurers as those insurers authorized to transact individual or group health insurance in certain states. <i>(Senate adopts Majority Committee Report; Ought not to pass, 5/20/09)</i>
Minnesota 2008 bills	H 3609 by Rep. Emmer (R) Relates to insurance; enacts the Minnesota Freedom to Buy and Sell Act; provides Minnesota employers and residents with the freedom to buy health coverage approved for sale in any state; provides insurance companies the freedom to sell in this state any health coverage permitted for sale in any other state. <i>(Filed and sent to House Commerce and Labor Committee; Failed Adjourned, 2/28/08)</i>
	H 4154 by Rep. Paulsen (R) Permits residents to buy health coverage approved in other states; creates a Physician's Council on Health Care Policy to analyze health coverage mandates; provides a tax credit for persons without access to employer-based coverage. <i>(Filed and sent to House Health and Human Services Committee; Failed Adjourned, 4/01/08)</i>
	S 3824 by Sen. Hann (R) Permits Minnesota residents to buy health coverage approved in other states; creates a Physicians Council on Health Care Policy to analyze health coverage mandates; provides a tax credit for persons without access to employer-based coverage. <i>(Filed and sent to Senate Health, Housing and Family Security Committee; Failed Adjourned, 4/07/08)</i>
	H 4218 by Rep. Dean (R) "Health plan companies authorized to issue health coverage in other states may issue health coverage in this state under this section." Sets policy goals for health care reform; establishes health savings accounts for state employees; sets spending targets for health and human services programs; establishes the Minnesota Care "Care for More Families" program; modifies assessments for MinnesotaCare taxes; makes changes in the tax treatment of premiums and medical expenditures; increases a tax credit for long-term care insurance; limits punitive damages and attorney fees for certain medical liability claims; relates to a single-payer system. <i>(Filed and sent to House Health and Human Services Committee; Failed Adjourned, 4/30/08)</i>
	H 4229 by Rep. Paulsen (R) "Health plan companies authorized to issue health coverage in other states may issue

	<p>health coverage in this state under this section." Relates to state health care reform; establishes health savings accounts for state employees; etc. <i>(Filed and sent to House Health and Human Services Committee, Failed Adjourned, 5/01/08)</i></p>
<b>New Hampshire</b> 2010 bills	<p><b>H 1431 &amp; H 1585</b> by Sen. Renzullo (R) Would authorize individuals to purchase health insurance from out-of-state health insurance carriers selected by the insurance commissioner; would grant rulemaking authority to the insurance commissioner for the purposes of the bill. Health Insurance Policies to be Sold Without Mandates. <i>(HB 1431 and HB 1585 Failed to pass house, 2/03/10)</i></p>
2011 bill	<p><b>S 452</b> by Sen. Bradley (R) Authorizes individuals and certain businesses to purchase health insurance from out-of-state insurance companies. <i>(Filed 1/6/10; passed Senate, 3/3/10; did not pass House, 4/21/10)</i></p>
	<p><b>H 327</b> by Rep. Garcia (R) Would authorize individuals to purchase health insurance from out-of state health insurance carriers selected by the state insurance commissioner; including rule making authority to the insurance commissioner for the purposes of the bill. <i>(Filed 1/6/11)</i></p>
	<p><b>S 150</b> by Sen. Bradley (R) Would authorize individuals and certain businesses to purchase health insurance from out-of-state insurance companies. <i>(Filed and referred to Senate Committee on Commerce- Ought to rerefer, 2/23/11)</i></p>
<b>North Carolina</b> 2009 bill	<p><b>S 725</b> by Sen. Berger (R) Authorizes insurers licensed to sell health insurance policies in other states to offer health insurance policies in this state. <i>(Filed and sent to Senate Commerce Committee; Failed adjourned, 3/24/09)</i></p>
<b>Oklahoma</b> 2010 bills	<p><b>S 1290</b> by Sen. Wilson (D) Relates to insurance; authorizes certain out-of-state health insurers to transact insurance in this state. <i>(Filed and sent to Senate Retirement and Insurance Committee; Failed adjourned, 2/02/10)</i></p>
2011 bill	<p><b>S 1346, S 2036</b> by Sen. Gumm (D) Relates to insurance; authorizes certain out-of-state insurers to issue certain policies in this state. <i>(Filed and sent to Senate Retirement and Insurance Committee; Failed adjourned, 2/02/10)</i></p>
	<p><b>S 57</b> by Sen. Brown B (R) Would create the Health Care Choice Act, authorizing the Insurance Commissioner to negotiate insurance compacts with other states; providing that out-of-state insurers would not be required to offer or provide state-mandated health benefits required by Oklahoma law or regulations in health insurance policies sold to Oklahoma residents. Would require "appropriate protection of Oklahoma consumers by allowing the Commissioner to regulate the market conduct and financial solvency of the nonadmitted insurers;" <i>(Filed and sent to Senate Committee on Retirement and Insurance- Do pass, 2/22/11)</i></p>
<b>Pennsylvania</b> 2009-10 bill	<p><b>S 508</b> by Sen. Folmer (R) Authorizes the purchase of health insurance from out-of-State insurers. <i>(Filed and sent to Senate Banking and Insurance Committee, 3/02/09)</i></p>
<b>South Carolina</b> 2010 bill	<p><b>S 986</b> by Sen. Rose (R) Would allow the department of insurance to offer health insurance policies from out-of-state insurers; would authorize the director of the department of insurance to conduct market and solvency examinations of out-of-state insurers seeking to offer plans; provides language that must be used in an out-of-state health insurance plan offered to state residents; authorizes the director of the department of insurance to conduct market and solvency examinations of out-of-state insurers seeking to offer plans in this state; provides language that must be present in an out-of-state health insurance plan offered to State residents.</p>

2011 bill	<p><i>(Filed and sent to Senate Banking and Insurance Committee; Failed Adjourned, 1/12/10)</i></p> <p><b>S 185</b> by Sen. Rose (R)          Would provide that the Department of Insurance shall authorize out-of-state insurers to offer health insurance policies in the state; authorizing market and solvency examinations of out-of-state insurers seeking to offer plans in the state; exempting policies from South Carolina coverage mandates while requiring inclusion of mandates specified by the insurer's home states.  <i>(Filed and sent to Senate Committee on Banking and Insurance, 1/11/11)</i></p>
Vermont 2010 bill	<p><b>H 697</b> by Rep. Komline (R)          Would allow state residents to purchase health insurance policies from insurance companies domiciled in other states, provided certain requirements of Vermont law are met, including minimum capital, surplus, and reserve requirements; disclosure and reporting requirements; and grievance procedures.  <i>(Filed and sent to House Health Care Committee; Failed adjourned, 2/1/10)</i></p> <p><b>HJR 39</b> by Rep. Poirier (D)          Non-binding resolution, would urge Congress not to pursue legislation authorizing individuals to purchase health insurance across state lines.  <i>(Filed and sent to House Health Care Committee; Passed Senate; Adopted, 3/31/10)</i></p>
West Virginia 2011 bill	<p><b>H 2801</b> by Rep. Miller J (R)          Would establish the "Health Care Choice Act," providing for out-of-state health insurers to be authorized to sell products in West Virginia, while not being required to offer or provide state-mandated health benefits required by West Virginia law.  <i>(Introduced and sent to the House Committee on Banking and Insurance, 1/24/11; failed)</i></p> <p><b>S 419</b> by Sen. Sypolt (R)          Same as H 2801.  <i>(Introduced and sent to the Senate Committee on Health and Human Resources, 2/4/11; failed)</i></p>
Wisconsin 2009-10 bill	<p><b>A 540</b> by Rep. Vukmir (R)          Allows out-of-state insurers to offer health care plans exempt from certain laws; provides that such insurers must be in compliance, have a certificate of authority and offer coverage under any plan offered in the domiciliary state; relates to taxation, assessments to fund the Health Insurance Risk Sharing plan, disclosure of personal medical information, unfair marketing practices, required testing for HIV, portability, contract renewal, plain language, discrimination and group health plans.  <i>(Filed and sent to Assembly Health and Health Care Reform Committee; Failed to pass pursuant to SJR1, 4/28/10)</i></p>

## Federal Legislation and Actions

Senator John McCain of Arizona proposed the following as a presidential campaign platform:

"Insurance reforms should increase the variety and affordability of insurance coverage available to American families by fostering competition and innovation...Families should be able to purchase health insurance nationwide, across state lines, to maximize their choices, and heighten competition for their business that will eliminate excess overhead, administrative, and excessive compensation costs from the system.

- Source: <http://www.johnmccain.com/healthcare/> [accessed 3/6/2008]

Congressman John Shadegg of Arizona. sponsored H.R. 2355 in the 109th Congress (2008-09).

The Health Care Choice Act (H.R. 2355) - Bill would allow residents from any state to purchase health insurance from any state. Also see (H.R. 4460): This bill did not become law.

*NOTE: Other congressional and federal activity is not itemized in this memo.*

NCPA Opinion Brief:

### EXCESSIVE STATE MANDATES INCREASE COSTS

Differing regulations and mandates among the states cause wide variations in individual health insurance rates. The federal McCarran-Ferguson Act, which lets states set their own requirements for coverage, has protected state markets from competition, and led to an assortment of mandates— many of which the insured do not want or need, say Devon Herrick, a senior fellow, and Ariel House, a junior fellow with the National Center for Policy Analysis.

For example:

- About one-fourth of states require health insurance to cover acupuncture and marriage counseling.
- More than half of states require coverage for social workers and 60 percent mandate coverage for contraceptives.

- Seven states require coverage for hairpieces and nine for hearing aids.

In all, there are more than 1,900 state mandates across the United States. Some legislators contribute to this excess by giving in to special interest demands that insurers cover their specific services and providers. The result is higher premiums for consumers -- pricing an estimated one-fourth of the uninsured out of the market, say Herrick and House.

Rep. John Shadegg (R-Ariz.) has proposed interstate competition at the federal level with the Health Care Choice Act (H.R. 4460):

- The bill would allow consumers to shop for individual insurance on the Internet, over the telephone or through a local agent.
- Residents of any state would be free to choose among policies from insurers in any state.
- The policies would be regulated by the insurer's home state.
- If consumers do not want expensive health plans that pay for benefits they do not need -- such as acupuncture, fertility treatments or hairpieces -- they could buy from insurers in states that do not mandate such benefits.

With interstate competition, consumers would be more likely to find a policy that fits their budget, giving more people access to affordable insurance, say Herrick and House.

- Source: Devon Herrick and Ariel House, "How to Make Health Insurance Affordable: 2008," National Center for Policy Analysis, Brief Analysis No. 630, September 2008.

For text: <http://www.ncpa.org/pub/ba/ba630/>

States do not have legislation to exempt entire health insurance companies from state regulation. In part this is because states can assert that mere regulation by the state is not inherently against, as some say, "fostering competition, cost and access issues."

1) An in-state insurance company could choose a business model that offers plans and products that are always exempt from state regulation, for example Medicare PDPs and ERISA self-insured plans for large employers. On paper they would be examples, but in fact this would be really nothing particularly new in law or regulation.

2) The larger federal discussion about Association Health Plans (AHPs), if enacted, could create a larger market.

3) Finally state "deregulation" efforts up to now have been relatively quite modest -. Mandate rollbacks have all been a small percentage change - going from 32 state mandates to 25 (not 0).

*All of the comments above are general observations and not a legal judgment.*

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## OTHER RESOURCES

- Link to Heartland Institute's Opinion Article in Support of H.R. 2355: <http://www.heartland.org/policybot/results.html?artId=17150>
- Link to Bill Text & Other Information: <http://www.govtrack.us/congress/bill.xpd?bill=h109-2355>
- [Fox Business Editorial](#) January 26, 2010: (Excerpt)  
Interstate Competition An interstate market in health insurance would deliver more competition than a public option. The Dems' health reform did not break the insurers' monopoly on the insurance market, in order to get their buy-in to their legislation.  
Instead, break that monopoly and let taxpayers buy insurance across state lines.  
We can buy auto insurance, life insurance across state lines, but not health insurance. You don't see a public option floated for auto or life insurance, do you?  
The National Center for Policy Analysis and the Commonwealth Fund have noted that the price of policies varied tremendously, due mainly to state regulations rather than variation in health care costs. States have a vapor lock on health insurance, which needs to be dialed back as well.  
"In states where health insurance costs are the highest, a portion of the premiums paid is being used to cross-subsidize the premiums of high-risk individuals," the NCPA says. Enacting pools across state lines might bring costs down even more.
- Link to Hypocrisy of "State Rights" Conservatives on Health Care: (Progressive States Network – February 11, 2010)  
Both national conservative leaders and a number of state legislators have attacked the current federal health bills as infringing on "state sovereignty." Yet they oddly ignore the fact that two of the main planks in conservative health proposals proposed by Congressional leaders— [allowing insurance companies to sell across state lines](#) ... the proposal to allow insurance companies to sell products across state lines would actually increase insurance costs for many consumers, especially the sick and the elderly who would see premiums skyrocket, as documented in [this New America Foundation report](#).
- Related strategy: "Association Group Insurance": Health insurance sold through an association to its members. In many states, it may be known as "out-of-state" group insurance because neither the health insurer nor the association



is principally domiciled in the state. Most associations provide their members with a variety of benefits. For example, the American Automobile Association (AAA) provides its members with towing insurance, travel discounts, travel planning service, access to auto and life insurance, and many other benefits. Association benefits are used, in part, to attract new members to the association.

Better benefit packages lead to better retention and increased membership. As a result, associations spend a great deal of time and effort in designing attractive benefit packages. The packages often include discounts on a variety of services and insurance products — including health insurance. After designing the benefit package with the health insurance company, the association makes the individually underwritten health insurance plans available to all of its members on a non-discriminatory basis. Not only has association group insurance been valuable to associations, it has proven invaluable to consumers as well. Although most nonelderly Americans (those under age 65) obtain coverage from their employer, many do not have access to employer based coverage. Millions of consumers nationwide have turned to the association group market for their health insurance. Association group insurance provides a valuable alternative to the traditional health insurance market in a number of states. In response, 46 states have imposed statutes and regulations to guide the advertisement, sale and administration of these insurers and policies. Most states have already passed laws that define the types of groups through which health insurance plans may be sold (including association plans) and the rules governing the groups. The recently revised National Association of Insurance Commissioners' Group Health Insurance Definition and Group Health Insurance Standard Provisions Model Act recognizes association group insurance and provides a framework to ensure that consumers can rely on association group insurance.

Note: Association group insurance is often confused with Association Health Plan (AHP) legislation being considered by Congress. They are two separate approaches. Associations can already sell health insurance if they are using a state-licensed insurance company to underwrite the policies, and those policies are subject to many state requirements. The federal legislation would allow associations, among other provisions, to bypass traditional insurance companies and has raised questions about whether they would be adequately funded.

Association group insurance helps lower the cost of providing health insurance and provides a valuable option for millions of Americans who do not have access to employer-based coverage. Association group insurance should continue to be protected from requirements like rate regulation and mandates that will further complicate the sale of these policies and increase costs. Additionally, associations should be permitted to offer health insurance coverage to their members across state lines without having to meet the burdensome filing and approval regulations for every state, so long as the association plan is based in an NAIC-accredited state. Those states that have imposed unnecessary regulations on association plans should consider ways to limit or remove those restrictions.

- Source: [http://www.cahi.org/cahi\\_contents/resources/pdf/StateLegislatorsGuide2008.pdf](http://www.cahi.org/cahi_contents/resources/pdf/StateLegislatorsGuide2008.pdf)

- State legislators initially explored this issue publicly in 2007. At that time the National Association of Insurance Commissioners (NAIC) confirmed that no state permitted such a practice in the state-regulated market, as detailed below:

*We are not aware of any state laws that would allow an individual to purchase insurance from another state. Of course, a non-resident employee of a company located in the state may be covered, but that's a different story. There is federal legislation that would allow individuals to purchase coverage from any State they choose, but it is not going anywhere. There have been problems with sham Union plans or sham MEWAs that say they are legally licensed in a state and are allowed to sell to individuals in other states. However, as the name suggests, they are shams and are not legal. Some states allow out-of-state trusts to be sold, but this is not really insurance."*

- Source: Amanda Yanek, Esq., Government Relations Policy Analyst, National Association of Insurance Commissioners; (202) 471-3973, 12/6/07.

- MAINE BACKGROUND:** Proposed Interstate Compact Would Lower Costs, Uninsurance Rates in Maine  
On September 7, 2008, the Maine Heritage Policy Center released a model bill it says would lower health insurance and health care costs statewide by making a greater range of insurance products available to the state's residents. A package of health insurance market reforms is included in the model legislation, allowing state residents to purchase any licensed insurance product available in any New England state. "Maine is a small state of 1.3 million," explained Tarren Bragdon, the group's director of health reform initiatives. "By creating a New England compact, insurance plans available to the 13 million people living in the other five New England states [would] be available in Maine." Separately, the bill also would make the individual and small-group markets more competitive by increasing the number of providers. It would cut taxes on health insurance and health care services and would allow individuals purchasing health insurance on their own to deduct the premiums from their state income tax.  
Lower Costs: Currently, choices in Maine are limited, and that drives up costs. "If a Maine parent does not have access to affordable employer-sponsored coverage for her 10-year-old child, she essentially has one choice in Maine's individual market for a product with a monthly premium of \$700 (\$1,000 deductible) to \$218 (\$5,000 deductible)," Bragdon explained. "However, in New Hampshire, she has numerous more affordable options from \$59 (\$5,000 deductible) to \$140 (\$1,000 deductible) [per month in premiums]." The same situation applies to healthy young adults, who often find health insurance to be so prohibitively expensive they choose to go without it. "By lowering costs and expanding access, we estimate [this model bill] would significantly reduce the 122,000 Maine people who are uninsured," Bragdon concluded. Devon M. Herrick, Ph.D., a senior fellow at the Dallas-based National Center for Policy Analysis, said letting Maine residents buy health insurance licensed in neighboring states is "a great idea." "Currently, the United States has no national market for health insurance. Rather, there are 50 separate state markets—leaving residents of small states like Maine without an adequate risk pool," Herrick explained.

- Written By: Dr. Sanjit Bagchi, Published In: Health Care News, Heartland institute

## Rhode Island Law Text

Chapter 099  
2008— S 2286 SUBSTITUTE B  
Enacted 06/26/08

### AN ACT RELATING TO INSURANCE -- HEALTH INSURANCE MARKET EXPANSION

Introduced By: Senators Sheehan, Perry, Sosnowski, Paiva-Weed, and Walaska  
Date Introduced: February 07, 2008

It is enacted by the General Assembly as follows:

SECTION 1. Sections 27-67-2, 27-67-3 and 27-67-4 of the General Laws in Chapter 27- 67 entitled "The Health Insurance Market Expansion Act" are hereby amended to read as follows:

27-67-2. Findings. -- The general assembly finds and declares that:

(1) Rhode Island has a proud history of health insurance companies including health insurance corporations, health maintenance organizations, nonprofit hospital service corporations, and nonprofit medical service corporations doing business in this state;

(2) Nationally and regionally, insurance corporations, health maintenance organizations, hospital service corporations and medical service corporations, are being consolidated or are departing from some state insurance markets. Rhode Island is one of twelve (12) states with three (3) or fewer health insurers active in the group insurance market;

(3) One reason cited for the departure of health insurers from the state of Rhode Island is the size of our population. States with larger populations offer a greater opportunity for competition and profit; and

(4) A regional approach to health insurance that joins Rhode Island's health insurance market with those of the other New England states ~~Massachusetts' regulations would~~ may expand the opportunities for regional insurers to offer insurance in Rhode Island.

27-67-3. Definitions. -- (1) "Department" means the department of business regulation;

(2) "Director" means the director of the department of business regulation;

(3) ~~"Health insurance corporation, health maintenance organization, nonprofit hospital service corporation or nonprofit medical service corporation"~~ "Health insurer", means the health insurance corporation, health maintenance organization, nonprofit hospital service corporation or nonprofit medical service corporation as defined in chapters 1, 18, 19 and 20 of this title.

27-67-4. Establishment of a regional health insurance market. - (a) ~~The director~~The health insurance commissioner shall undertake a review of the existing laws and regulations pertaining to the business of health insurance in this state , and in other New England states ~~the commonwealth of Massachusetts~~. On or before March ~~January~~ 1, 2005-2009 , the ~~director~~the health insurance commissioner shall submit a report to the general assembly on what changes would be necessary to the laws and/or regulations of Rhode Island in order to meet the goal of enabling health insurers licensed in other New England states to do business in Rhode Island without a separate application for licensure in Rhode Island. The report shall address the extent to which licensure is a barrier to bringing other health insurers into the Rhode Island market. The report shall further address the manner in which licensure can be automatically granted to those insurers licensed in other New England states while still requiring that such insurers otherwise remain bound by the non-licensure related laws and regulations governing the administration of health insurance benefit plans in Rhode Island. ~~recommending needed revisions in Rhode Island law to reconcile with that of Massachusetts. The director shall also delineate a timetable for regulatory change and cooperative agreements with the insurance commissioner in Massachusetts to effectuate a seamless health insurance market incorporating both states.~~The report shall include an analysis of barriers to the creation of a regional health insurance market and a proposed timeline for implementing all changes that would be needed to establish a regional health insurance market.

### NOTES

1 - NAIC. Memorandum: "State Insurance Regulator Responsibilities Under Health Reform" (as of March 23, 2010)

The original version of the memo was compiled December 4, 2007; material has been added periodically as legislative actions have evolved.



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