Few agree on the best way to increase competition in the health insurance marketplace as an old idea gets a second look.

BY DICK CAUCHI

If I live in Oklahoma and my health insurance policy costs $597 but a similar policy in Arkansas costs only $379, why can’t I buy the out-of-state plan?

That consumer lament is at the core of a health policy idea being batted around today—once again.

President Donald Trump signed an executive order in October resurrecting “Association Health Plans” to promote competition in health care markets and to limit what he calls “excessive consolidation throughout the health care system.” The aim of these plans is to make it easier for trade groups and small businesses to band together—especially across state lines—to negotiate better and less expensive health plans from insurance companies. By increasing competition, supporters say, these plans will help push costs down, give consumers more choice and improve access to care.

The executive order states these plans will help small businesses overcome the competitive disadvantage they have with large employers who can spread risk and administrative costs across more employees. Association health plans will also allow more small businesses to avoid “many of the PPACA’s costly requirements,” it says.

The idea isn’t new, however. It originated at least 30 years ago. And some argue the plans are no solution. “They failed in droves because many were undercapitalized,” says Mark Hall, a professor of law and public health at Wake Forest University. “These earlier association plans had a history of becoming what the U.S. Labor Department termed ‘scam artists.’ The Government Accountability Office reported that they were ‘bogus entities that have exploited employers and individuals seeking’ more affordable insurance policies,” Hall says.

States Regulate Insurance

States have a precedent as the primary regulators of insurance and guardians of consumers’ rights. The first self-insured association health plans marketed in the 1980s, however, sometimes evaded states’ consumer regulations. In 1992, at least two dozen states reported association plans had committed “fraud, embezzlement or other criminal law violations,” Hall says.

By 2000, association plans had become much less significant, an experiment gone wrong, many said.

More than 40 states had enacted new “patient protection” statutes and mandated coverage for individuals and small employers, but these efforts had limited effect on keeping down costs and equalizing insurance rates. In fact, the patient protection requirements

Dick Cauchi is NCSL’s expert on health insurance.
differed from state to state, which, along with other factors, added to the differences in the price of health insurance policies from state to state. In 2013, for example, monthly premiums for individuals averaged $473 a month in New Jersey, but only $157 a month in Utah. The U.S. average was $235.

Talk of making the rules more flexible to allow purchasing health insurance across state lines reappeared again in the 2000s. The Affordable Care Act, passed in 2010, included a provision allowing states to legally permit insurers to sell plans outside their borders and to create their own regulations, starting Jan. 1, 2016. But the federal government has never completed the rulemaking process on how the law works.

Legislators in Rhode Island and Wyoming passed the first two laws authorizing the concept in 2008. By 2012, lawmakers in Kentucky, Maine and Georgia had also passed legislation, and Oklahoma did so in 2017. In the past decade, more than 20 state legislatures have debated the practice.

**Where Are the Plans?**

The results in the six states are not what supporters anticipated, however. As of mid-2017, not a single state regulator or insurer had reported a public offering or a consumer purchase of a cross-state individual or family health plan, the National Association of Insurance Commissioners, which collects state data on insurance sales, reported.

Why? Insurers are skeptical. Despite the idea’s enduring popularity, association plans have a poor track record—for both insurers and consumers. Insurers say it can be difficult attracting enough providers and complying with the complexity of multi-state regulations. Consumer advocates are concerned that these plans will sidestep states’ consumer protections and skimp on benefits.

Writing for a Commonwealth Fund report, research professor Kevin Lucia points out that: “Proponents suggest that association health plans will be able to offer lower premiums to members through increased bargaining power and fewer regulatory requirements. However, while some members of association health plans may benefit, this approach would undermine many of the ACA’s protections for people with preexisting conditions and stymie states’ ability to regulate health coverage sold to their residents.”

Some lawmakers also fear that instead of states negotiating with each other on which of their insurance department’s laws will apply to a multistate company’s federal regulators will simply preempt state regulations, starting a new state-federal tug-of-war.

**North Dakota Representative George Keiser (R) co-chair of NCSL’s Insurance Task Force, wants to be sure states play a role in any change in federal policy. “States have a firm tradition and precedent of guiding the kind of insurance we sell in each state,” he says.

“We hope states are at least at the table when the details of this plan are worked out.”**

### What’s in the Executive Order?

Among other things, the executive order states: Large employers often are able to obtain better terms on health insurance for their employees than small employers because of their larger pools of insurable individuals across which they can spread risk and administrative costs. Expanding access to AHPs can help small businesses overcome this competitive disadvantage by allowing them to group together to self-insure or purchase large group health insurance. Expanding access to AHPs will also allow more small businesses to avoid many of the PPACA’s costly requirements. Expanding access to AHPs would provide more affordable health insurance options to many Americans, including hourly wage earners, farmers, and the employees of small businesses and entrepreneurs that fuel economic growth.

“My administration will also continue to focus on promoting competition in healthcare markets and limiting excessive consolidation throughout the healthcare system. ...to re-inject competition into healthcare markets by lowering barriers to entry, limiting excessive consolidation, and preventing abuses of market power; and improve access to and the quality of information that Americans need to make informed healthcare decisions, including data about healthcare prices and outcomes, while minimizing reporting burdens on affected plans, providers, or payers.”

### Where Out-of-State Health Insurance Sales Are Allowed

![Map showing state legislation on cross-state health insurance sales.](Source: NCSL, Nov. 7, 2017.)

- **Legislation Passed**
- **Legislation Vetoed**
- **Legislation Did Not Pass**
- **No Action**

**Source:** NCSL, Nov. 7, 2017.