Sense, but Sensibility? Moving Toward Association Health Plans

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The Employer Health Benefits 2004 Annual Survey, released by the Kaiser Family Foundation and the Health Research and Educational Trust last month, reported an 11.2% increase in premiums for employer-sponsored health insurance. The statistic marks the fourth consecutive year of double-digit growth. Employers, particularly small firms, cite the cost of health benefits as a barrier to offering coverage to employees. Higher premium costs have been linked to employer decisions to reduce premium subsidies or to drop health benefits altogether. Earlier this year, the U.S. House of Representatives passed the Small Business Fairness Act of 2004 to allow the formation of Association Health Plans (AHPs). The creation of AHPs would allow small businesses and professional associations to collaborate across state lines to bargain for insurance coverage at a lower cost. AHPs seem a rational, if partial, response to barriers to job-based insurance coverage, but concerns about regulation and effectiveness persist.

Proponents, including the U.S. Department of Labor, trade associations, and small businesses, emphasize the potential of AHPs to lower the costs of providing coverage and reduce the number of uninsured persons. AHPs would create economies of scale and increase the ability of the participating employer or small business to extract from insurance companies better plans at a competitive (read: lower) cost. As a consequence, more employers would opt to purchase health benefits for their employees. More employees would opt to purchase coverage through their employers. Others champion AHPs as a remedy for insurance fraud observed among Multiple Employer Welfare
Arrangements (MEWAs) and unlicensed plans that purport to group employers for the purpose of purchasing insurance only to disappear with dollars paid in premiums.

Other arguments for AHPs as a check on health care costs rely upon end-runs around state insurance regulations. AHPs would be subject to regulation under the Employee Retirement Income Security Act, the federal law that governs benefit and pension plans of most large employers and preempts most state insurance laws. The Small Business Health Fairness Act of 2003, an earlier version of the legislation considered this summer, would eliminate language in ERISA that prohibits unrelated employers and worker associations from offering self-funded plans. Self-funded AHPs would benefit from the limits on employer liability and exemptions from state taxes on insurance premiums common among ERISA plans. AHPs would escape state mandates to cover certain services and, more generally, the lack of uniform insurance regulations across state lines. In short, AHPs would avoid the administrative costs associated with traditional plans subject to state regulation. If passed on to the employees, the cost savings would reduce the small but significant percentage of eligible employees who decline coverage.

By broadening the availability of health benefits to businesses and employees, AHPs would facilitate the implementation of either employer or individual mandates. Employer mandates or, alternatively, individual mandates are a common element of health care reform proposals. Several experts have commented that the biggest barrier to job-based coverage is the fact that the decision to offer coverage or to participate in employer-sponsored plans is voluntary. California recently enacted the Health Insurance Act (known as SB 2), a play-or-pay employer mandate to expand health insurance
coverage to a portion of the state’s working uninsured population. This law requires employers to either “play,” by providing employee health benefits that meet a minimum standard, or “pay” a fee to the state to cover workers under a state-sponsored program. Group pooling systems reduce barriers to the technical feasibility of mandates.

Perhaps the strongest argument against AHPs is that the effect on the number of uninsured would be minimal. The Congressional Budget Office estimated that AHPs would reduce the 42 to 45 million uninsured persons in the United States by approximately 330,000. Included within that number are persons who would have had access to insurance coverage through another source. The lower costs available through AHPs would attract employers with relatively healthy workers away from traditional plans. The premiums of traditional and state-sponsored plans would increase to reflect the risk associated with the remaining pool. The increased premiums would force employers not eligible for AHPs to drop coverage and thereby offset the number of persons who gain insurance through an employer in an AHP.

Others question the effect of AHPs on the cost of health care coverage on the macro level. The ability to self-insure is an important component of arguments favoring AHPs. As one commentator noted, self-funded plans tend to favor fee-for-service benefit packages (FFS). Despite the unpopularity of the managed care model, the FFS model includes incentives for the provider to engage in behavior that ultimately increases the cost of health care. The proliferation of self-funded plans would exert a countervailing force against checks on insurance premiums.

The exemption of AHPs from state regulation subverts state sovereignty by thwarting state efforts to establish minimum quality standards for insurance plans. The
mandated benefit laws criticized as costly are a direct result of the failure of insurance companies to meet the needs of a given community. The laws reflect community consensus regarding the importance of certain services and a minimum standard beneath which an insurance company cannot demand premiums in exchange for a promise of care. Until such time as consensus regarding a floor of benefits reaches the national level (in the context of employer or individual mandates, perhaps?), the gap between ERISA plan requirements and state requirements is cause for concern.

The chair of the Senate Health, Education, Labor, & Pensions Committee, Sen. Judd Gregg (R-N.H.), reportedly favors insurance market reforms to AHP legislation. According to the recommendations of a Senate Republican task force released in May of this year, the federal preemption of state insurance requirements, for example, would facilitate the development of standard health insurance products that can be offered across state lines.

AHPs are a logical response to the pressures facing small employers in a job-based coverage environment. The advantages and disadvantages of the model turn on different but legitimate sets of suppositions about market behavior. A policy option favored by trade associations and small businesses for reasons that are now obvious, the creation of AHPs cannot but hurt the participants in traditional plans and groups that pose an unattractive insurance risk. The expenses generated by persons who lack adequate coverage do not disappear; the question is one of cost-shifting only. National legislators should move forward only upon evidence that the creation of AHPs will effect true improvement in the number of uninsured. Otherwise, AHPs are simply a boon to
business interests at the expense of a lasting solution to absorb the cost of caring for those
left behind.

2 H.R. 4281.