Opinion

Mad About States

JOHN E. McDONOUGH

A CONSISTENT THEME IN 2017 REPUBLICAN CONGRESSIONAL efforts to repeal and replace the Affordable Care Act (ACA) was the intent to empower the 50 states to use federal funds to reengineer their Medicaid and individual health insurance markets as they see fit. If yet another Republican attempt at ACA repeal and replace happens in 2018, the most likely vehicle will be a reformulated Graham-Cassidy bill, the final 2017 repeal effort in the US Senate that featured far-reaching devolution to states. The idealization of states as the best makers of health policy is a myth worth busting.

States, goes the thinking, are closer to the people than those who govern from Washington, DC, more attuned to real-world preferences and values than feds. States are nimbler, better at adjusting and innovating than the plodding feds. States are, in the high-minded and oft-repeated words of late Supreme Court Justice Louis Brandeis, “the laboratories of democracy.”

As Republican Senator Bill Cassidy (R-LA) wrote in the *Washington Post* this past July, “Returning the decision-making power to the states is not a Republican plan or a Democratic plan, but an American plan that reflects the faith in states held by our Founding Fathers.”¹

As someone who has labored for decades in the vineyards of state health policy, I reply, nonsense. I give states their due. Massachusetts, for example, provided the inspiration for both the 1997 Children’s Health Insurance Program (CHIP) and the 2010 private health insurance reforms in title 1 of the ACA. Democratic and Republican leaders there and in many other states have forged successful bipartisan approaches to some of America’s thorniest health challenges. Yet the notion that states have innate wisdom and a tighter finger on the pulse of the people always superior to the federal government is not true. One example will do.

In poll after poll, one ACA provision has shown strong and durable support from Americans across the board, regardless of party.² That

provision, called “guaranteed issue,” prohibits insurance companies from discriminating against potential policyholders based on their current or prior medical histories, a practice known as “medical underwriting.” More familiarly, it involves the insurer practice of imposing “pre-existing condition exclusions” or limits on insured persons based on current or prior medical conditions such as asthma, diabetes, cancer, cardiovascular disease, mental illness, domestic violence, and pretty much anything else an insurance company wants to use.

The use of medical underwriting and pre-existing condition exclusions was banned from all commercial health insurance policies sold in the United States as part of the ACA’s title 1. The ban took effect on January 1, 2014. On December 31, 2013, 45 states still permitted insurance companies to discriminate against their customers based on medical histories. Only 5 states (Maine, Massachusetts, New Jersey, New York, and Vermont) required that all individual health insurance policies be offered on a guaranteed issue basis with community rating (meaning that premiums cannot vary based on health status).³

In every Republican initiative in the US House and Senate in 2017 to repeal and replace the ACA, one constant was the attempt to empower states to undermine the ACA’s ban on medical underwriting and pre-existing condition exclusions. Often, these attempts were linked to permitting states to repeal any or all of the ACA’s ten “essential health benefits,” such as inpatient and outpatient care, prescription drugs, behavioral health services, maternity care, and more. The ACA’s ban on medical underwriting only pertains to the 10 essential health services. So, repealing the requirement for these services would be *de facto* repeal of guaranteed issue.

No provision in any of the ACA repeal bills instigated more anger and fury among the public than the Republican assaults on guaranteed issue. And rejection of this proposal was not confined to the general public. Indeed, almost all health sector stakeholders roundly rejected the idea, including hospitals, physicians, labor unions, consumers, and, yes, even insurance companies. It turns out that as long as every insurance company must comply with guaranteed issue, most insurers are not fond of discriminating either.

During 2017, were there any signs that state governments rejected repeal or undermining of guaranteed issue? No. The most prominent

associations of state officials—National Governors Association, National Conference of State Legislatures, Council of State Governments, National Conference of Insurance Legislators—were silent. Though many states would reject new authority to eliminate or undermine guaranteed issue, just as likely, many states would consider seriously such a policy change.

So, the one insurance market reform most strongly favored by the American public is something that 45 of the 50 state governments couldn't or wouldn't be bothered to address on their own prior to the ACA.

The real-world difficulty with guaranteed issue is that, absent an individual mandate to purchase health insurance, the policy by itself will trigger substantial health insurance premium increases. Because of this, several states, such as Kentucky, New Hampshire, and Washington repealed or watered down their guaranteed issue laws in the 1990s when they experienced such premium inflation.

Though 55% of Americans, in a recent Kaiser Health Tracking Poll, indicated support for repealing the individual mandate, that level of support drops to less than 40% when the consequences of repealing the mandate on guaranteed issue are explained to respondents.⁴

So if state governments, as Senator Cassidy asserts, are so finely and exquisitely tuned to the preferences and desires of their people, why the tone-deafness on their part in addressing one of the most valued and supported reforms, eliminating pre-existing condition exclusions and medical underwriting? The answer is that states are not necessarily smarter or better when it comes to health care policy than the federal government is. This point is further reinforced by the continuing resistance on the part of 18 states to expanding their Medicaid programs—even with minimum 90% federal financing as provided under the ACA.

If it serves the political agenda of Republicans to attempt to eliminate or water down guaranteed issue, or to block grant the Medicaid program to states, OK. That's your policy and political preference and go for it as much as you are able. But the notion that such devolution reflects "the faith in states held by our Founding Fathers" is absurd.

Devolution to states is an opportunistic political pathway to achieve policy objectives not attainable at the federal level, nothing more and nothing less.

References

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Address correspondence to: John E. McDonough, Division of Policy Translation & Leadership Development, Harvard T.H. Chan School of Public Health, 677 Huntington Ave, Boston, MA 02115 (email: jmcdonough@hsph.harvard.edu).