

Health Insurance - Interstate Sales

This Act directs the state insurance commissioner to enter into a consortium with at least five other states for the reciprocal interstate sale of health insurance policies. It requires one of the consortium states be designated as the primary state for purposes of regulation under that state's laws and regulations. It provides that a consortium state insurer is exempt from a secondary state's laws and regulations, except for premium taxes and assessments, registration requirements, unfair claims practices and judicial process. The bill also identifies matters to be considered by the commissioner in establishing rules of reciprocity, the types of policies eligible to be sold and the effect of interstate sales on regulation of domestic insurers.

Submitted as:

Wyoming

[HB 128 \(Enrolled Act 61\)](#)

Status: Enacted into law in 2010.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act Authorizing Selling Health
2 Insurance in this State by Out-of-State Insurers.”

3
4 Section 2. [*Legislative Findings.*] The [legislature] recognizes that people seeking medical
5 and surgical health insurance coverage in this state need the opportunity to choose among
6 competitive medical and surgical health insurance plans which are affordable and flexible.
7 Therefore, the [legislature] seeks to increase the competitive availability of medical and surgical
8 health insurance coverage by allowing insurers authorized to engage in the business of insurance in
9 [this state] who are also authorized to engage in the business of insurance in selected other states to
10 issue individual medical and surgical health policies in [this state] based upon their policy approval
11 in the other selected states. In addition, the [legislature] seeks to initiate cooperation of like-minded
12 states to create a multi-state consortium with reciprocity agreements for approval, offer, sale, rating,
13 including medical underwriting, renewal and issuance of individual medical and surgical health
14 insurance policies. By creating a consortium of states with reciprocity agreements, the larger
15 population of several states with a single approval for sale in multiple states will be attractive to
16 insurers to develop and rapidly introduce lower cost effective products to residents [of this state].

17
18 Section 3. [*Definitions.*]

19 (a) As used in this Act:

20 (i) “Comprehensive individual medical and surgical insurance policy” shall have the
21 same meaning as “health benefit plan” as that term is defined in [insert citation], including, at a
22 minimum, comprehensive major medical coverage for medical and surgical benefits;

23 (ii) “Health insurance,” “health benefit plan” and “health benefit policy” mean a
24 health benefit plan as defined by [insert citation];

25 (iii) “High deductible health plan” means accident and sickness insurance plans sold
26 or maintained under the applicable provisions of section 223 of the Internal Revenue Code;

27 (iv) “Primary state” means the state designated by the issuer as the state whose
28 covered laws shall govern the health insurance issuer in the sale of health insurance coverage, and

29 (v) “Secondary state” means any state that is not the primary state.
30

31 Section 4. [*Sale of Medical and Surgical Insurance Policies Approved in Identified Other*
32 *States.*] In accordance with the provisions of this Act, the [commissioner] shall identify at least [five
33 (5)] states with insurance laws sufficiently consistent with [this state’s] laws. The [commissioner]
34 may approve for sale in [this state] selected comprehensive individual medical and surgical
35 insurance policies that have been approved for issuance in those other states where the insurer is
36 authorized to engage in the business of insurance so long as the insurer is also authorized to engage
37 in the business of insurance in this state and provided that the policy meets the requirements set forth
38 in this Act. High deductible health plans that meet national standards for comprehensive medical and
39 surgical coverage may be among the policies automatically approved in [this state] if approved in the
40 states identified as acceptable by the [commissioner].
41

42 Section 5. [*Approval of Policies.*] A policy approved and issued pursuant to this Act shall be
43 treated as if it were issued by an insurer domiciled in [this state] regardless of the insurer’s actual
44 domiciliary.
45

46 Section 6. [*Financial Requirements; Continuing Compliance.*]

47 (a) Any insurer selling an insurance policy pursuant to this Act, and any plan approved under
48 this Act, shall satisfy actuarial standards and insurer solvency requirements set forth by the National
49 Association of Insurance Commissioners (NAIC) and adopted by regulation promulgated by the
50 [commissioner] or as otherwise prescribed by regulation promulgated by the [commissioner] so long
51 as the regulation is not inconsistent with NAIC standards.

52 (b) Any policy sold in [this state] under the coverage and administrative laws and regulations
53 of another state that are not covered by a guarantee association or similar association of that state
54 shall be protected under [insert citation].

55 (c) The [commissioner] shall have the authority to determine whether an insurer satisfies the
56 standards required by this section and shall not approve a policy or plan that he finds not in
57 compliance with this section. The [commissioner] shall have the authority to determine whether the
58 policies sold pursuant to this Act continue to satisfy the requirements set forth in this section in the
59 same manner as the [commissioner] does with an individual accident and sickness insurance policy
60 approved pursuant to [insert citation]. The [commissioner] shall have the authority to suspend or
61 revoke new sales of out-of-state policies if the laws and regulations of those states are determined to
62 egregiously harm residents of [this state]. Upon suspension or revocation, the issuers of the out-of-
63 state policies shall be required to notify in writing all affected policyholders in [this state] of the
64 suspension or revocation determination by the [commissioner].
65

66 Section 7. [*Multi-State Consortium; Reciprocity Requirements.*]

67 (a) The [commissioner] shall explore with other state [insurance commissioners] the creation
68 of a consortium of like-minded states that could establish rules of reciprocity for the approval of
69 comprehensive individual medical and surgical health insurance policies among the participating
70 states.

71 (b) The [commissioner] shall solicit the thoughts and report a consensus, where one exists, of
72 the other [commissioners] interested in creating a consortium of like minded states in establishing
73 rules of reciprocity for the approval of health insurance policies. Issues to be considered include but
74 are not limited to:

75 (i) Whether the consortium should involve only high deductible individual policies,
76 all comprehensive individual medical and surgical health insurance policies, both of these types of
77 individual policies plus small group policies or all health insurance policies;

78 (ii) Whether insurers should be free to price differently among consortium states
79 dependent on local health care costs and market conditions;

80 (iii) Whether a policy approved in a primary state shall be automatically available in
81 all secondary states of the consortium, or available at the option of the insurer;

82 (iv) In areas where an associated preferred provider network is absent, whether sale of
83 policies should be prohibited, disclaimers should be required or the sale of policies should be
84 regulated only by market forces and conditions;

85 (v) The adequacy for a multi-state consortium of existing state laws on insurer
86 financial solvency, guarantee funds and imposition and collection of premium taxes;

87 (vi) The authority of a secondary state to deal with customer complaints concerning a
88 multi-state policy;

89 (vii) Whether and when an insurer selling a policy approved in a primary state must
90 notify the [commissioner] of a secondary state that the insurer is marketing the policy in the
91 secondary state;

92 (viii) Whether secondary state insurers, in order to sell competitive policies, may
93 match any less restrictive primary state rules governing policies sold in the secondary state, and
94 whether disclaimers to warn potential customers shall be required on policies and promotional
95 materials in the secondary state;

96 (ix) Whether any of the issues identified in this subsection require the enactment of
97 uniform laws in the consortium states;

98 (x) Estimated savings to customers from policy approval only in the primary state and
99 from uniform or less restrictive policies across the consortium states, and

100 (xi) Other issues deemed appropriate by the [commissioners] to implement a multi-
101 state consortium.

102 (c) The [commissioner] shall make an initial proposal that [this state] recommends the rules
103 of approval for reciprocity should include terms and conditions to protect customers similar to the
104 following:

105 (i) An issuer, with respect to a particular policy, may only designate [one (1)] state as
106 its primary state with respect to all coverage it offers using that policy. An issuer may not change the
107 designated primary state with respect to individual health insurance coverage once the policy is
108 issued; provided, however, that a change in designation may be made upon renewal of the policy
109 with approval of the policyholder. With respect to the designated primary state, the issuer shall be
110 licensed and approved to be doing business in that state;

111 (ii) In the case of a health insurance issuer that is selling a policy in, or to a resident
112 of, a secondary state, the issuer shall be licensed and approved to be doing business in that secondary
113 state, and

114 (iii) The covered laws of the primary state shall apply to individual health insurance
115 coverage offered by a health insurance issuer in the primary state and policies sold in any secondary
116 state. The coverage and issuer shall comply with these terms and conditions with respect to the
117 offering of coverage in [this state].

118 (d) Except as provided in this section, a health insurance issuer with respect to its offer, sale,
119 rating (including medical underwriting), benefit payment requirements, renewal and issuance of
120 comprehensive individual medical and surgical health insurance coverage in [this state] is exempt
121 from any covered laws of [this state] as the secondary state and any rules, regulations, agreements or
122 orders sought or issued by the [commissioner] under or related to the covered laws to the extent that
123 the laws would:

124 (i) Make unlawful or regulate, directly or indirectly, the operation of the health
125 insurance issuer operating in [this state] as a secondary state, except that the [commissioner] may
126 require an issuer:

127 (A) To pay on a nondiscriminatory basis applicable premium and other taxes,
128 including high risk pool assessments and other assessments which are levied on insurers and surplus
129 lines insurers, brokers or policyholders under the laws of [this state];
130 (B) To register with and designate the [commissioner] as its agent solely for
131 the purpose of receiving service of legal documents or process;
132 (C) To submit to examinations of its financial condition in accordance with
133 the policies and regulations established through the national association of insurance
134 [commissioners] for accreditation of states to perform these examinations;
135 (D) To comply with an injunction issued by a court of competent jurisdiction,
136 upon a petition by the [commissioner] acting pursuant to [insert citation];
137 (E) To participate, on a nondiscriminatory basis, in any insurance insolvency
138 guaranty association or similar association to which a health insurance issuer in the state is required
139 to belong;
140 (F) To comply with any state law regarding fraud and abuse, except that if the
141 state seeks an injunction regarding the conduct described in this subparagraph, the injunction shall
142 be obtained from a court of competent jurisdiction;
143 (G) To comply with any state law regarding unfair claims settlement
144 practices; and
145 (H) To comply with the applicable requirements for external review
146 procedures with respect to coverage offered in the state.
147 (ii) Discriminate against the issuer issuing insurance in both the primary state and in
148 any secondary state.
149 (e) Nothing in this section shall be construed to prohibit a health insurance issuer:
150 (i) From terminating or discontinuing coverage or a class of coverage in accordance
151 with the laws of the primary state;
152 (ii) From reinstating lapsed coverage; or
153 (iii) From retroactively adjusting the rates charged an insured individual if the initial
154 rates were set based on material misrepresentation by the individual at the time of issue.
155 (f) A health insurance issuer may not offer for sale individual health insurance coverage in
156 [this state] unless that coverage is currently offered for sale in the primary state.
157 (g) A person acting, or offering to act, as an agent or broker for a health insurance issuer with
158 respect to the offering of individual health insurance coverage shall obtain a license from [this state],
159 with commissions or other compensation subject to the provisions of the laws of [this state], except
160 that [this state] may not impose any qualification or requirement which discriminates against a
161 nonresident agent or broker.
162 (h) Each health insurance issuer issuing individual health insurance coverage in both primary
163 and secondary states shall submit to the [insurance commissioner] of each state in which it intends to
164 offer the coverage before it may offer individual health insurance coverage in the state:
165 (i) A copy of the plan of operation or feasibility study or any similar statement of the
166 policy being offered and its coverage which shall include the name of its primary state and its
167 principal place of business;
168 (ii) Written notice of any change in its designation of its primary state; and
169 (iii) Written notice from the issuer of the issuer's compliance with all the laws of the
170 primary state.
171 (i) Nothing in this section shall be construed to affect the authority of any federal or state
172 court to enjoin the solicitation or sale of individual health insurance coverage by a health insurance
173 issuer to any person or group who is not eligible for that insurance.
174 (j) Out-of-state companies offering health benefit plans under this Act shall be subject to
175 regulation by the [commissioner] with regard to enforcement of the contractual benefits under the

176 health benefit plan, including the requirements regarding prompt payment of claims for benefits
177 pursuant to [insert citation.]

178

179 Section 8. [*Rules and Regulations.*]

180 (a) The [commissioner] shall draft rules and regulations necessary to implement this Act but
181 shall be under no obligation to draft rules and regulations until after [insert date]. The
182 [commissioner] may adopt the rules provided they are consistent with the requirements of [insert
183 citation].

184 (b) Any dispute resolution mechanism or provision for notice and hearing in this Act shall
185 apply to insurers issuing and delivering plans pursuant to this Act.

186

187 Section 9. [*Conflict with Other Code Provisions.*] If the provisions of this Act conflict with
188 any other provision of this code, the provisions of this Act shall control.

189

190 Section 10. [*Authorization Date.*] No policy shall be issued or delivered for issuance in this
191 state pursuant to the provisions of this Act before [date].

192

193 Section 11. [*Severability.*] [Insert severability clause.]

194

195 Section 12. [*Repealer.*] [Insert repealer clause.]

196

197 Section 13. [*Effective Date.*] [Insert effective date.]