Rate Review

The Patient Protection and Affordable Care Act (PPACA) strengthens oversight of the health insurance industry by creating a federal-state process for the review and approval health plans' premium increases.

Background

PPACA includes a number of provisions to strengthen the regulation of rate increases in the private health insurance market. First, and most notably, it empowers the new insurance exchanges to ban health plans that have a pattern and practice of excessive rate increases.[1] Second, it requires insurance companies to submit to the Department of Health and Human Services (HHS) justification for any unreasonable increases in rates, and publicly post those justifications on their websites.[2] Third, it creates a $250 million federal grant program to encourage states to expand and improve the process by which they review and approve premium rates.[3]

Regulation of insurance rates prior to PPACA

Regulation of health insurance rates varies dramatically from state to state. The majority of states have little or no authority to block premium increases from going into effect in the individual and small group markets. And almost no states review or approve rates for large employers. Those that do have such authority are often constrained by a lack of staff resources and tight timelines for review (many rates are "deemed" approved if they're not reviewed within 60 or fewer days).[4]

The lack of regulatory oversight is a relatively recent phenomenon. Most states until the mid-1990s required insurance commissioners to conduct a robust review of rates to ensure that they did not increase faster than medical costs. These laws and practices were gradually rolled back as a result of lobbying by insurance companies, who argued that the review process was too slow and burdensome.[5]

The rate review provisions of PPACA arose out of concern that the deregulation of rate review had gone too far. Health insurance premiums have doubled on average over the last 10 years, much faster than wages and inflation, putting coverage out of reach for millions of Americans and business owners.[6] Companies across the country have been raising premiums by as much as 20, 30, even 50 percent, often without even a cursory review by state regulators. In a number of those cases, subsequent independent evaluation of those rate increases found significant flaws in insurers' methodology, causing them to agree to rate reductions.[7]

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1 Patient Protection and Affordable Care Act (PPACA) § 1311(e)(2).
2 § 1003, adding new Public Health Service Act (PHSA) § 2794(a).
3 § 2794(c).
4 NAIC Response to Request for Information Regarding Section 2794 of the Public Health Service Act, May 12, 2010, available at http://www.naic.org/documents/committees_e_hrsi_hhs_response_rr_adopted.pdf.
5 Paltrow, S. "The Case for a Stronger Federal Role in Insurance Regulation," Center for American Progress Action Fund, Jun. 2010.
6 HHS, "New Resources to Help States Crack Down on Unreasonable Health Insurance Premium Hikes," available at http://www.healthcare.gov/news/factsheets/rates.html (accessed Aug. 24, 2010).
7 Ibid. See also, Duke Helfland, "A Mathematical David Stuns a Healthcare Goliath," *Los Angeles Times*, Jul. 15, 2010, available at http://articles.latimes.com/2010/jul/15/business/la-fi-anthem-20100716.

Examples

- *In August of 2010, Blue Cross Blue Shield of Massachusetts agreed to reduce its proposed premium increase of 23% to 13%.*
- *In 2010, Oregon disapproved premium increase requests of 10%, 18% and 20% for individual market insurance policies.*
- *In February 2010, Anthem Blue Cross of California requested a 39% increase in premiums. After additional scrutiny, an independent audit found errors in Anthem's math, resulting in Anthem withdrawing its request.*

Rate Review under PPACA

PPACA requires HHS to work in collaboration with state insurance commissioners to conduct an annual review of "unreasonable increases in premiums."[8] The law does not define, however, what constitutes an "unreasonable" increase. That determination will be left to HHS, presumably in partnership with state insurance commissioners. To define "unreasonable," it is likely HHS will want to look at such factors as a plan's pattern of rate increases over recent years, assumptions about the rate of growth in medical costs, the plan's "medical loss ratio" (i.e., how much the plan is spending on medical care vs. administrative costs), and the overall financial solvency of the company.[9]

The new law requires that plans submit justifications for any unreasonable rate increases to the states and HHS, and post them on their websites. HHS is also required to make those justifications publicly available.[10] In addition, in order to promote transparency, HHS has asked the National Association of Insurance Commissioners (NAIC) to develop a standard, consumer-friendly form that all health plans must use to justify unreasonable rate increases. Such a form will ensure the information is available to the public in a way that allows "apples-to-apples" comparisons of plans' requests to raise premiums.

PPACA also provides states with a pool of $250 million in federal grants to support enhanced rate review. For the first round of grants, forty-five States and the District of Columbia each were awarded $1 million. States are using the funds in the following ways:

- 15 states and the District of Columbia (DC) will seek additional authority from their legislature to review rates, and require companies to seek advance approval before they can impose a premium hike.
- 21 states and DC will use regulatory authority to expand what they're currently doing, for example by reviewing more rate filings for more health insurance plans.
- All the grantees will require plans to report more information on their rates and the underlying costs.
- 42 states and DC will increase transparency and make more consumer-friendly information about insurance rates available on their websites.

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8 § 2794(a).
9 Op. cit., NAIC Response to Request for Information.
10 § 2794(a)(2).

- All the grantees will develop and upgrade existing technology to speed up the review process and disseminate information to the public.[11]

As a condition of those grants, states must pledge to provide HHS with information about trends in premium increases in their state, both inside and outside of the new insurance exchanges.[12] HHS is also charged with assessing the rate of premium growth inside and outside the state exchanges before allowing any businesses larger than 100 employees to participate.[13]

Conclusion

State insurance regulators can play an important role in helping consumers and businesses get the best value for their health care dollars. History has shown that when state insurance departments lack authority to review and disapprove rate increases, “market competition” in most states is not enough to keep health plans from raising premiums faster that the growth of medical costs. PPACA provides states with incentives and needed financing to conduct more robust rate review and hold health plans more accountable.

by Sabrina Corlette

11 Op. Cit., HHS Factsheet.
12 § 2794(a)(2).
13 Ibid.