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Health Insurance Market Reforms: Rate Review

Overview

What is rate review?

Rate review is the process by which insurance regulators review health plans' new or renewed rates for insurance policies in order to ensure that the rates charged are based on accurate, verifiable data and realistic projections of health care costs. Rate review has historically been conducted by state insurance departments (DOIs), but under the Affordable Care Act (ACA), federal regulators may review rate increases in some cases. States take a range of approaches to reviewing health insurance rates. In most states, insurance carriers file data supporting a new rate or a renewal rate, which is then reviewed by DOI staff. Under the ACA, annual rate increases of 10 percent or more must be reviewed to determine whether they are reasonable, and insurers are required to provide and make public a justification of such rate increases. The Secretary of Health and Human Services (HHS) conducts this rate review in states that do not, but the Secretary only has authority to review and publicize such rate increases, not to disapprove them. By contrast, in many states, if the rate is found to be unreasonable or unsupported, the DOI may either disapprove the rate or require the health plan to use a lower rate. If state regulators make such a finding after the rate has already gone into effect, they may require the health plan to lower rates, issue rebates, or otherwise compensate policyholders.

How are premium rates reviewed by states?

The rate review process varies from state to state and between health insurance markets. Most state insurance commissioners have the authority to require health plans to file data supporting their rates before they are in effect and to approve or to disapprove those rates or proposed rate increases. Other states require insurers to file justifications for their rates, and regulators will review proposed rate increases and determine whether they are reasonable, but similar to the Secretary of HHS, these state regulators have no authority to approve or disapprove rates before they are put into effect. A few states require only an actuarial certification attesting that the insurer's rates are in compliance with state law, but these filings are not required to include any underlying data on those rates. Two states do not require any filing at all in the individual market.

In states that require health plans to file their rates, there are two main systems for how those rates are reviewed: file-and-use and prior approval. In a file and use system, rates can go into effect immediately or after a certain time period. The state may not review before the rates go into effect, but the state can take action later if the rates are found to be unreasonable. This type of regulation often relies on consumer complaints to indicate a problem. A more proactive type of rate regulation is used in states that possess a prior approval system for rate review. In prior approval states, states must file their rates with the state department of insurance at a certain date before that rate is scheduled to go into effect. Regulators then have the authority to review those rates and to disapprove rates and rate increases that they find do not meet state standards.

Common state standards are that rates cannot be "excessive, inadequate or unfairly discriminatory," or that "benefits are reasonable in relation to premiums charged." Some states also regulate rates by requiring or encouraging the health plan to meet a minimum expected loss ratio. The loss ratio demonstrates the percentage of premium revenue that insurers allocate to pay for health care services versus overall administrative costs such as staff salaries, marketing, and profits.

Within states, rate review authority can vary depending on the type of market and/or type of insurer. Some states have prior approval in the small group market, but employ a file-and-use process in the individual market. In other states, it's the reverse. Other states give regulators prior approval authority only for HMOs and Blue Cross Blue Shield plans, but not for commercial carriers. Among prior approval states, most employ a deemer period under which the state insurance department has a window of time to review a rate filing. If, by the end of that window, the DOI has not formally disapproved the rate, that rate may be deemed approved. Deemer periods can range from 30 to 120 days.

How does the Affordable Care Act (ACA) affect rate review?

Prior to ACA, there was no federal law relating to rate review, and health insurance rates were exclusively regulated by the states. The ACA encourages states to enhance their review of insurers' proposed rate increases and allows HHS to establish minimum standards for the review of unreasonable rate increases. HHS has determined that rate increases of 10% or more merit review to determine whether they are unreasonable. If a state rate review program meets the new minimum federal standards and is deemed an "Effective Rate Review Program," HHS will accept the state's determination of whether or not such rate increases are unreasonable. If the state's rate review program does not meet the minimum federal standards, federal regulators will conduct reviews of rate increases of 10% or more to assess their reasonableness. This federal review examines the data and trend projections underlying a rate and determines whether the rate increase is excessive, unjustified, or unfairly discriminatory. Information supporting the insurers' rates is posted on a federal web site.

To have an Effective Rate Review Program, a state must have authority to require health plans to submit supporting data for the proposed rate increase and conduct a review of the rate increase that includes an examination of medical cost trends, changes in enrollees' use of health care services, benefits and cost sharing, changes in the risk profile of enrollees, reserves, administrative costs, taxes and fees, loss ratio, and the insurer's capital and surplus. In addition, the state must provide access from its web site to insurers' rate filings and have a mechanism for the public to comment on proposed rate increases.

HHS evaluated state rate review processes to determine which states have an Effective Rate Review Program, and as of February 2012, concluded that 43 states and the District of Columbia have effective programs for both their individual and small group insurance markets. Six states (Alabama, Arizona, Louisiana, Missouri, Montana and Wyoming) were judged not to have effective rate review programs in the individual or small group markets. Virginia's rate review process was not considered effective for HMOs in the individual market or for its entire small group market; however, it was considered effective for commercial insurers in the individual market. Insurance

companies in these states must file any rate increases of 10% or more with the federal government.

The ACA's rate review provisions apply to rates for individual and small group health insurance, including individual and small employer policies sold through associations, even if a state does not normally include association coverage in its definition of individual or small group insurance. This regulation is meant to cover what was considered a significant loophole. In some states, a substantial percentage of individual and small group health insurance is sold through associations.[1]

The ACA also dedicates $250 million in grants to assist states in improving their rate review processes. These grants have helped state DOIs hire new staff to review rates, enhance IT capacity to review rates more efficiently, and expand legal authority to review rates. In addition to helping insurance regulators check unjustified rate increases, these grant funds can help state DOIs prepare to implement the ACA's 2014 market reforms, such as the new rules prohibiting insurers from charging higher rates based on someone's health status.

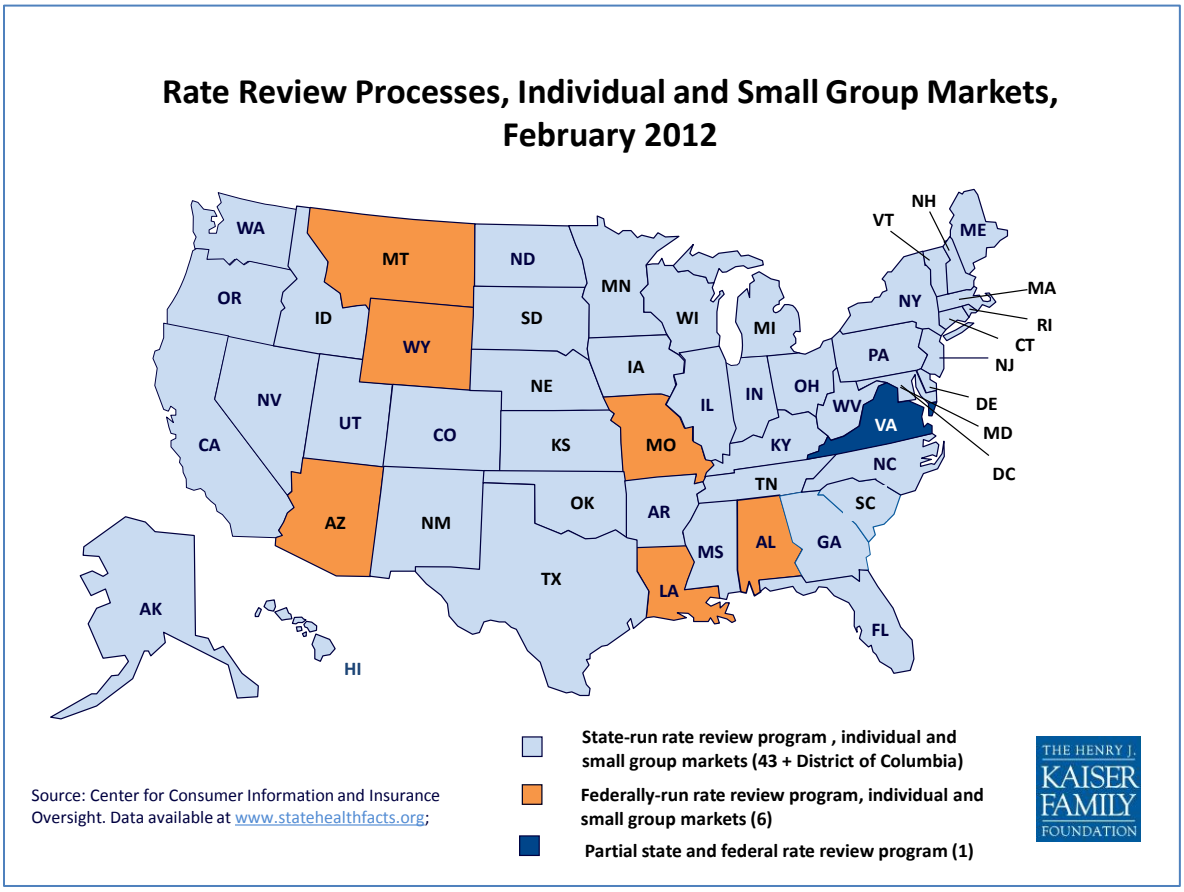
Rate Review in the States: Current Status

Individual Market

Almost all states currently require insurers in the individual market to file information about their rates with the department of insurance. Forty-eight states and the District of Columbia currently require rate filings in at least some instances. Of those, 44 and the District of Columbia require rate filings for all individual market carriers and all new or renewed rates. One state—Colorado—requires a rate filing only for rate increases, while two others—Idaho and Wisconsin—require rate filings only for rate increases at or above ten percent. Alabama requires rate filings for individual HMOs and Blue Cross Blue Shield (BCBS) plans, but not for commercial insurers. Missouri and Montana do not require any individual market rate filings.

As discussed above, rate review processes vary dramatically among states. Thirty-seven states and the District of Columbia currently possess prior approval authority over at least some filings in the individual market. Thirty-three of those states and the District of Columbia have prior approval overall rate filings in the individual health insurance market. Colorado and Kentucky have prior approval authority only for rate increases. Alabama has prior approval authority only for HMOs and BCBS rate filings. Hawaii, Georgia, and Wyoming's prior approval authority is limited to individual HMO filings only and Virginia has the reverse: their prior approval authority does not extend to HMOs. Fifteen states use a file-and-use system for some or all filings.

[1] In 13 of the 43 effective rate review states, HHS found that the DOI does not have an effective rate review program for some or all individual or small group coverage sold through associations; HHS conducts rate review for some or all association coverage in these states: FL, HI, ID, KY, MS, NE, NC, OR, PA, RI, VT, WA, WI.



Small Group Market

In the small group market, every state requires some sort of rate filing for at least some insurers. Forty-four states and the District of Columbia require a full rate filing in at least some cases, and 38 of those states plus the District of Columbia require all insurers in the small group health insurance market to submit full rate filings. Colorado and South Carolina require filings only for rate increases, and Idaho, Pennsylvania and Wisconsin only for rate increases at or above ten percent. Pennsylvania also requires filings for rate decreases of 10% or more. Connecticut requires full filings only for HMO carriers in the small group market. Six states require only an actuarial certification or rating manual, which allows insurers to attest that their rates are in compliance with state law, but does not require them to submit the underlying data or justification for the proposed rates.

Thirty-seven states and the District of Columbia have prior approval authority over some or all insurers and products, of which 28 plus the District of Columbia have prior approval authority over all rate filings in the small group market. In four states, Colorado, Kentucky, Pennsylvania and Washington, prior approval authority is dependent on whether the insurer has requested a rate increase. Of those states, Pennsylvania and Washington may also exercise prior approval authority for rate decreases over a certain amount. Three states have prior approval authority only for HMOs, and another has prior approval authority only for HMOs and BCBS plans. Twenty states employ a file-and-use system for some or all filings.

Transition to 2014

The ACA's rate review provisions were largely implemented in 2010 and 2011. These reforms, and states' actions to implement them, could have considerable importance in 2014, when the oversight of rates will be used not just to assess their reasonableness, but also to ensure health plans' compliance with the ACA's new restrictions on health status rating and other insurance reforms. In addition, the ACA requires the new health insurance exchanges to consider a health plan's pattern and practices with respect to unjustified or excessive premium rate increases in deciding whether to make the plan available on the exchange.

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State Authority to Review Health Insurance Rates, Individual and Small Group Markets, 2012

State	Individual Market Rate Filing Required	Individual Market Review Authority	Small Group Market Rate Filing Required	Small Group Market Review Authority
Alabama	Yes (HMOs/BCBS only)	File and use*	Yes (HMOs/BCBS only)	File and use*
Alaska	Yes	Prior approval	Yes	Prior approval
Arizona	Yes	File and use	Actuarial certificate only	File and use
Arkansas	Yes	Prior approval	Yes	Prior approval
California	Yes	File and use	Yes	File and use
Colorado	Yes (if rate increase requested)	Prior approval (for increases)	Yes (if rate increase requested)	Prior approval (for increases)
Connecticut	Yes	Prior approval	Yes (HMOs only); all others actuarial certificate	File and use*
Delaware	Yes	Prior approval	Yes	Prior approval
District of Columbia	Yes	Prior approval	Yes	Prior approval
Florida	Yes	Prior approval	Yes	Prior approval
Georgia	Yes	File and use*	Yes	File and use*
Hawaii	Yes	Prior approval	Yes	Prior approval
Idaho	Yes (if increase above 10%)	File and use	Yes (if increase above 10%)	File and use
Illinois	Yes	File and use	Yes	File and use
Indiana	Yes	Prior approval	Yes	Prior approval
Iowa	Yes	Prior approval	Yes	Prior approval
Kansas	Yes	Prior approval	Yes	Prior approval
Kentucky	Yes	Prior approval (for increases)	Yes	Prior approval (for increases)
Louisiana	Yes	File and use	Yes	File and use
Maine	Yes	File and use	Yes	File and use*
Maryland	Yes	Prior approval	Yes	Prior approval
Massachusetts	Yes	Prior approval	Yes	Prior approval
Michigan	Yes	Prior approval	Yes	Prior approval
Minnesota	Yes	Prior approval	Yes	Prior approval
Mississippi	Yes	Prior approval	Yes	Prior approval
Missouri	No	NA	Actuarial certificate only	File and use
Montana	No	NA	Actuarial certificate only	File and use
Nebraska	Yes	Prior approval	Yes	Prior approval
Nevada	Yes	Prior approval	Yes	Prior approval
New Hampshire	Yes	Prior approval	Yes	Prior approval
New Jersey	Yes (informational use only)	File and use	Yes (informational use only)	File and use
New Mexico	Yes	Prior approval	Yes	Prior approval
New York	Yes	Prior approval	Yes	Prior approval
North Carolina	Yes	Prior approval	Yes	Prior approval
North Dakota	Yes	Prior approval	Yes	Prior approval
Ohio	Yes	Prior approval	Yes	Prior approval
Oklahoma	Yes	File and use	Yes	Prior approval
Oregon	Yes	Prior approval	Yes	Prior approval
Pennsylvania	Yes	Prior approval	Yes (if increase/decrease above 10%)	Prior approval (if increase above 10%)
Rhode Island	Yes	Prior approval	Yes	Prior approval
South Carolina	Yes	Prior approval	Yes (if rate increase requested)	File and use
South Dakota	Yes	Prior approval	Yes	Prior approval
Tennessee	Yes	Prior approval	Yes	Prior approval
Texas	Yes	File and use	Actuarial certificate only	File and use
Utah	Yes	File and use	Yes	File and use
Vermont	Yes	Prior approval	Yes	Prior approval
Virginia	Yes	File and use*	Rate manual only	File and use
Washington	Yes	Prior approval	Yes	File and use*
West Virginia	Yes	Prior approval	Yes	Prior approval
Wisconsin	Yes (if increase above 10%)	File and use	Yes (if increase above 10%)	File and use
Wyoming	Yes	File and use*	Actuarial certificate only	File and use*

**State has prior approval authority over some carriers or some filings. More detailed information at www.statehealthfacts.org*