



# The Case for a Stronger Federal Role in Insurance Regulation

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Scot J. Paltrow June 2010

Individual states, not the federal government, have long had the responsibility to regulate the individual and small group insurance markets. Those regulations have been watered down over the past two decades and in some cases eliminated. States have bowed to insurance industry pressure and enacted laws taking away their insurance departments' power to vet proposed premium hikes in advance. Insurers in these states have a free hand to significantly raise rates with little or no oversight. Some states have begun to beef up their insurance oversight, but the federal government should play a role to provide added consumer protections.

The Patient Protection and Affordable Care Act includes a number of provisions designed to strengthen oversight of the health insurance industry, most notably the authority to ban insurers from participating in the newly created exchanges if they excessively increase premium rates. The Department of Health and Human Services will be responsible for using these new tools in the law to give consumers who purchase their coverage in the individual and small group market greater stability in their health care costs.

In addition, Sen. Dianne Feinstein (D-CA) and Rep. Janice Schakowsky (D-IL) introduced legislation giving the federal government power to block unreasonable premium increases, and President Barack Obama included it in his health reform plan. Yet the proposal was not included in the final health reform law. Congress should pass this measure to provide additional protections for consumers against insurance company gouging.

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## States began deregulating the health insurance premiums in the 1990s

Regulation of the health insurance industry varies from state to state. Laws in 31 states give insurance commissioners little or no authority to block unduly large premium hikes from going into effect in the individual and/or small group markets.

This has not always been the case. Most states until the mid-1990s required their insurance departments to review proposed rate changes for individuals and small businesses to ensure that insurance companies did not profiteer by raising rates far beyond the actual cost of medical expenses. Then state lawmakers watered down the laws with almost no press coverage or public attention.

The health insurance companies had complained that the advance approval process was costly, slow, and often influenced by political concerns. The companies contended that states often turned down rate increases needed to keep up with increasing costs, putting some insurers in financial jeopardy.<sup>1</sup> The companies assured state lawmakers that they would strictly regulate themselves to prevent excessive rate hikes.

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## Insurance industry pressures state lawmakers

Insurers have considerable clout with state governments in part because of their generous campaign contributions. Records show that large health insurers have been major contributors to candidates for state offices. Four of the biggest health insurers—Wellpoint, UnitedHealth Group, Humana, and Aetna—contributed \$8.7 million to candidates for state offices and state campaign committees in 42 states from 2005 through 2008, according to a 2010 report by the National Institute on Money in State Politics.<sup>2</sup>

Kevin Hennosy, a former National Association of Insurance Commissioners official who for years has written about state insurance regulation in industry magazines and newsletters, said state regulation of health premiums is far weaker now than it was a decade ago. “There has been a steady decline in regulation, driven by the increasing power of the health insurance industry,” Hennosy said.<sup>3</sup>

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## Regulation in 23 states varies from weak to none

Twenty-three states currently have no advance review for individual health policies, according to data supplied by the National Association of Insurance Commissioners. Fourteen of these 23 states have so-called “file and use” laws, which allow insurers to merely file notice of hikes before putting them into effect. These laws allow state regulators to act only months after increases have gone into effect, and then only if they learn that insurers’ profits from the hikes actually far exceeded what they had paid out in medical benefits.

Regulators in 9 of the 23 states have no power to regulate individual premium hikes even after they have gone into effect.<sup>4</sup> Thirty-one states plus the District of Columbia have no advance review of premium hikes for “small group” health policies purchased by small employers. And Texas’s insurance department only reviews individual premium hikes of 50 percent or more, although a department spokesman said it will review smaller increases in response to consumer complaints.

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## There is no premium rate regulation at all in some states

There is no regulation of premium rate increases at all in nine states. Six of those states require insurers to file notice of premium changes for “informational” use only. And insurers in three of the states are not even required to notify the state of any premium change. Missouri is one of them. An insurance department spokesman there confirms that the state has never required insurers to even notify the state of their health insurance rates. State regulators are by law barred from taking any action, no matter how much premiums end up exceeding actual medical expenses.

The Missouri insurance department’s website says the state allows market forces to determine premium rates: “Missouri is an open competition state and, as such, we do not have the authority to regulate premiums on most types of health insurance. Our state relies on competition among companies to determine the premium rates.”<sup>5</sup>

But policyholders in Missouri say competition hasn’t prevented big rate hikes year after year. Rates for some small employers have risen rapidly in Missouri. Central Reform Synagogue in St. Louis covers its nine employees under a small group policy from Wellpoint’s Blue Cross and Blue Shield. The synagogue’s executive director, John Terranova, said that the company increased the premium by 23 percent in 2007, 20 percent in 2008, and another 15 percent in 2009. The insurer then

sent notice that the premium would jump by 30 percent for 2010. The temple, faced with that increase, opted to reduce its coverage by increasing the deductible and co-pays. Yet the synagogue still had to pay a 15 percent increase as of January 1, 2010, even with the reduced coverage, according to the executive director.<sup>6</sup>

Mary Albert, pastor of Epiphany United Church of Christ in St. Louis, has seen the costs of her own insurance soar because of several chronic medical conditions. She says that in practice there is no competition at all in Missouri for policyholders who have pre-existing medical conditions because if they drop their coverage no other insurer will take them.

Rev. Albert, 57, says she can't leave Wellpoint's Blue Cross and Blue Shield of Missouri because of ailments that require medication and frequent tests. She said the company has raised the premiums on her individual health policy every year in recent years, often by more than 10 percent. Ms. Albert, who makes \$30,000 a year, says she finally couldn't afford to keep the same level of coverage—which she pays for out of her own pocket—when she received notice of a 30 percent premium increase that was to go into effect January 1, 2010. The increase, to \$10,476 per year, would have been more than one-third of her pre-tax income. She said that she had no choice but to scale back her coverage despite her costly illnesses, and among other things had to accept a \$1,000 increase in her annual deductible to \$2,500.

A Wellpoint spokeswoman said the company couldn't comment on individual policyholders. But she called attention to a statement issued by the company, which said, "We understand and strongly share our members' concerns over the rising cost of health care services and the corresponding adverse impact on insurance premiums. Unfortunately, the individual market premiums are merely the symptoms of a larger underlying problem in the individual market—rising health care costs."

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### States with more regulation use authority sparingly due to limited resources and political pressure

Some states do require prior approval of premium hikes, yet in practice state regulators use the power sparingly.

Twenty-nine states plus the District of Columbia require prior approval of individual health premiums, and 18 states have prior approval of small group policies. But former state regulators and others who monitor state regulation say that regu-

lators even in these states often wave through requested hikes—often because of political pressure by large insurers. Many insurance departments also have small staffs with few individuals qualified to review proposed rate increases. The most recently available data shows that 21 states’ insurance departments have total staffs of fewer than 100 employees to oversee all types of insurance.<sup>7</sup>

Former Indiana Insurance Commissioner Sally McCarty said that because of weak state laws and the political power of the health insurance industry in many states, “I think you would find very few examples of state regulators who are aggressively trying to keep premiums down.”<sup>8</sup>

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### Recent notices of big rate hikes

California’s Anthem Blue Cross, a subsidiary of WellPoint, drew harsh criticism after disclosure earlier this year that it was increasing premium rates for individuals by as much as 39 percent. Anthem canceled the California rate increases in April after state regulators, spurred by a public outcry over the hikes, investigated and concluded that Anthem had substantially overstated future medical costs it had used to justify the increases. These premium increases are not just occurring in California. A February 2010 CAP Action Fund report showed that other units of Wellpoint, Anthem’s parent company, imposed double-digit percentage increases on individual premiums in 11 other states.<sup>9</sup>

The report analyzed data obtained mainly from state insurance departments and found many instances of recent big premium increases in states where insurance companies are free to raise rates by any amount without advance review and approval by state regulators.

Data on the Illinois insurance department’s website shows, for example, that five out of the seven rate changes so far in 2010 on individual policies were for increases of double-digit percentages. These ranged from a 20 percent increase by American Family Mutual Insurance Co. to a 31 percent hike by Union Health Service Inc.<sup>10</sup> Illinois is one of the states that currently does not regulate individual and small group rate hikes at all, requiring only that insurers notify the state of rate changes for “informational” purposes.

Aetna Health Inc.’s 2010 premiums for its HMO members in New York increased by 35 percent from a year ago. The New York insurance superintendant released

data showing that as of January 1, 2010, the average premium of all HMOs in the state had increased by 17 percent for individuals and 18 percent for small businesses, compared with a year earlier.

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## A few states begin cracking down

A few states are having second thoughts about deregulation. In New York, Gov. David Paterson signed a law on June 9, 2010 reinstating advance approval of insurance premium increases. He called deregulation “a failed experiment leading to unjustified premium increases.”

Then-New York Gov. George Pataki had signed a law in 1996 that abolished long-standing prior approval, transforming New York into a “file and use” state. Pataki at the time said that “competition in the health care system is much more effective in constraining costs than government regulation and control.”<sup>11</sup>

But a 2009 report by the New York State Insurance Department said the change had proved disastrous. It said that insurers had failed to police themselves, resulting in “excessive premium increases, incomplete refunds, and deficient consumer protection.”<sup>12</sup> It also alleged that insurers often fudged the numbers when reporting financial results to state regulators, deliberately understating their actual profits from premium hikes.

Colorado and Washington recently changed their laws to require advance approval of rates. The Colorado legislature gave its state insurance department the new authority in 2008, and in 2009 it rejected 88 proposals for premium hikes on specific individual and small group policies, requiring companies to reduce or abandon requests for rate increases.<sup>13</sup>

Officials in Illinois and Georgia as well as New York are pressing for their state legislatures to pass similar laws. Montana’s insurance commissioner is also on record criticizing her state’s current law, which she said leaves her powerless “to regulate unreasonable increases.”<sup>14</sup>

Massachusetts’s Division of Insurance earlier this year issued an emergency regulation in response to widespread anger over big rate hikes in the state, and it used that authority to block 235 of 274 rate increases that insurers had intended to

impose on small group policies in the state. The division said the denied increases were “excessive” and “unreasonable relative to the benefits provided.”<sup>15</sup>

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## A better approach

Shortcomings at the state level suggest the need for a stronger federal role. The recently passed health reform law took steps to rein in the insurance industry, to be sure. The law, among other provisions, requires the Department of Health and Human Services and the states to develop a process for monitoring rate increases. It also requires insurers to post justification for premium increases on their websites in advance. And the new law enables state insurance exchanges to exclude insurers that have increased rates excessively from participating in this new insurance market as it is launched in 2014.

Yet Congress should do more to prevent excessive premium increases in the years ahead. Sen. Feinstein and Rep. Schakowsky introduced legislation in the wake of large premium rate increases in California that would give the Health and Human Services Department secretary the power to block excessive premium increases, require insurers to modify their rate request, pay rebates to consumers, or otherwise curtail insurance company profiteering. It would also establish an advisory Health Insurance Rate Authority. President Obama subsequently endorsed this approach, but the constrained process for final consideration of the health reform bill forced removal of the provision.

Congress should revisit this issue as federal and state regulators begin to implement health reform. Just as states are choosing to use the back-stop of a federally administered high-risk pool rather than operate a high-risk pool themselves, a federal panel with authority to reject excessive increases would enable states to achieve a greater level of oversight and consumer protection over insurers in the individual and small group markets than they have been able to realize on their own. States can and should toughen their laws, but a new federal rate authority would provide a consistent level of oversight across the country and help state insurance departments that are facing limited resources and pressure from the insurance industry.

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## Appendix

### State individual insurance rate hike policies

A total of 23 states do not review and approve premium changes before insurance companies put the changes into effect. Fourteen of these are “file and use” states, which allow their insurance departments to review and take action only after the rates have been in effect for some time if actual experience shows that the rate changes produced excessive profits. Six of the 23 states don’t regulate rate changes at all, either before or after they go into effect, but require insurers to notify them in advance of rate changes for “informational” purposes only. And 3 of the 23 states not only don’t regulate premium changes, but don’t even require insurers to notify them of such changes.

#### State policies on individual premium rate hikes

<b>File and use” states</b>	<b>“Informational” filing only</b>	<b>No rate regulation at all</b>
Alaska*	Alabama	Missouri
California	Arizona	Montana
Delaware	Georgia	Wyoming
Idaho	Illinois	
Kansas	Mississippi	
Kentucky	Oklahoma	
Louisiana		
Michigan		
Nebraska		
New York		
South Dakota		
Texas*		
Utah		
Wisconsin*		

Notes: Alaska requires advance approval by regulators if the increase is greater than 10 percent. Texas requires advance approval by regulators if the premium increase is 50 percent or more. Wisconsin requires insurers to notify the state of rate increases only after they go into effect.

Source: National Association of Insurance Commissioners, “Rate Review Simplified Chart 4/1/10,” provided to CAP Action by the association.



State small group premium rate hike policies

Thirty states and the District of Columbia do not review and approve premium changes to small employer policies before they go into effect. There is wide variation among these states' rules, ranging from no regulation at all to the right to take action after rate changes have gone into effect if actual experience shows that they have produced excess profits.

**States that do not review and approve small group premium rate hikes**

Alabama	Indiana	New York
Alaska	Kansas	Oklahoma
Arizona	Kentucky	Pennsylvania
Arkansas	Louisiana	South Carolina
California	Maine	South Dakota
Connecticut	Michigan	Texas
Delaware	Mississippi	Utah
District of Columbia	Missouri	Virginia
Georgia	Montana	Wisconsin
Idaho	Nebraska	Wyoming
Illinois	New Jersey	

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## Endnotes

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- 3 CAP Action interview with Kevin Hennosy, March 25, 2010.
- 4 The National Association of Insurance Commissioners, "Compendium of State Laws on Insurance Topics" (2009), p. II-HA-10-1 through II-HA-10-13, "Filing Requirements: Health Insurance Forms and Rates" CAP Action interviews with state insurance department officials in more than a dozen states.
- 5 Missouri Department of Insurance website, available at <http://insurance.mo.gov/consumer/faq/lhfaqs.htm#raise>.
- 6 CAP Action interview with John Terranova, executive director, Central Reform Synagogue, St. Louis, March 22, 2010.
- 7 National Association of Insurance Commissioners, "2008 Insurance Department Resources Report" (2009).
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- 9 Scot J. Paltrow, "Wellpoint Raising Rates by Double Digits in at Least 11 States" (Center for American Progress Action Fund, 2010), available at <http://www.americanprogressaction.org/issues/2010/02/pdf/wellpoint.pdf>.
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- 15 Massachusetts Office of Consumer Affairs and Business Regulation, "Patrick-Murray Administration's Division of Insurance Announces Decision on Rate Increase Submissions from Health Insurers," Press release, April 1, 2010, available at [http://www.mass.gov/?pageID=ocapressrelease&L=4&L0=Home&L1=Government&L2=Our+Agencies+and+Divisions&L3=Division+of+Insurance&sid=Eoca&b=pressrelease&f=20100401\\_hirates&csid=Eoca](http://www.mass.gov/?pageID=ocapressrelease&L=4&L0=Home&L1=Government&L2=Our+Agencies+and+Divisions&L3=Division+of+Insurance&sid=Eoca&b=pressrelease&f=20100401_hirates&csid=Eoca)