Using Health Insurance Rate Review Authority to Constrain Hospital Costs

NAIC Health Innovations (B) Working Group

Erin C. Fuse Brown, JD, MPH

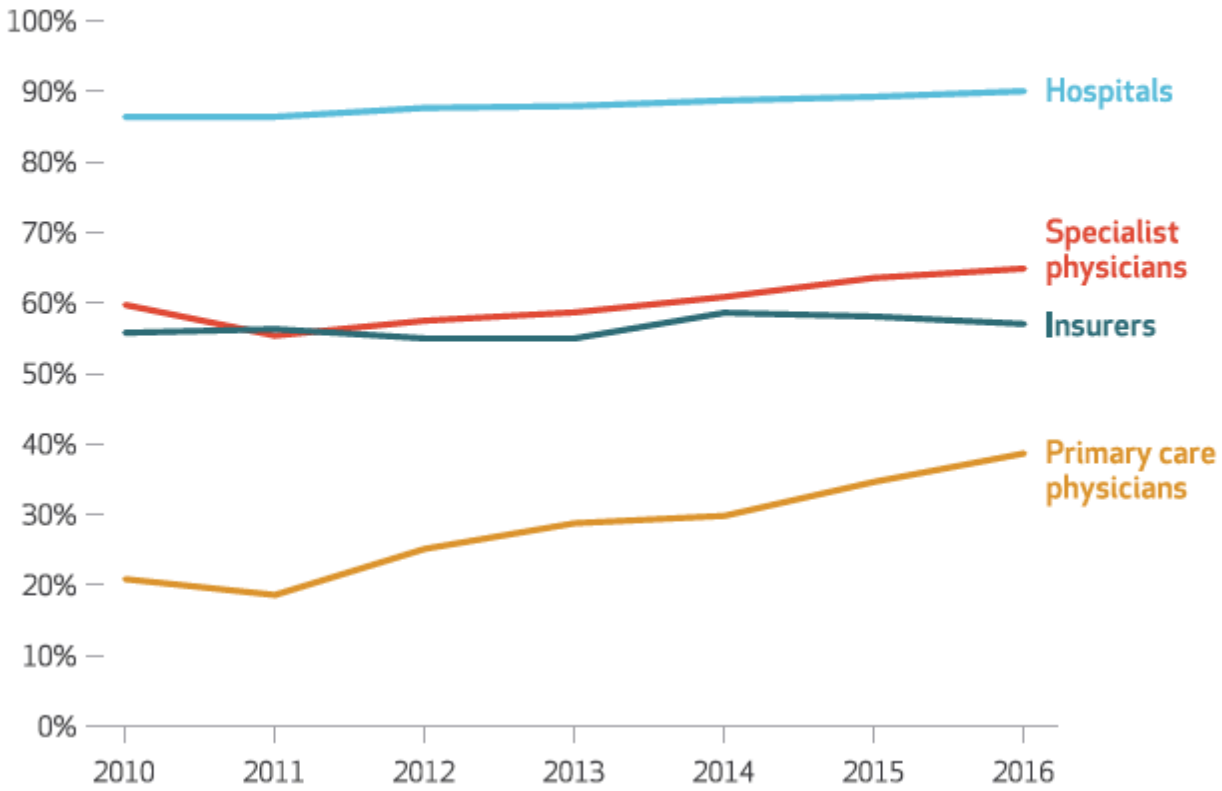
Nov. 2, 2021

Georgia State University | COLLEGE OF LAW

The Problem: High Prices Driven by Consolidation

EXHIBIT 2

Percentages of Metropolitan Statistical Areas (MSAs) whose Herfindahl-Hirschman Index (HHI) was above 2,500 for hospitals, physician organizations, and health insurers, 2010–16



% of markets that are highly concentrated:

65% of specialty physician markets

57% of insurer markets

39% of primary care markets

Source: Fulton, BD. Health Care Market Concentration Trends in the United States: Evidence and Policy Responses. Health Affairs. 2017;36(9):1530-1538.

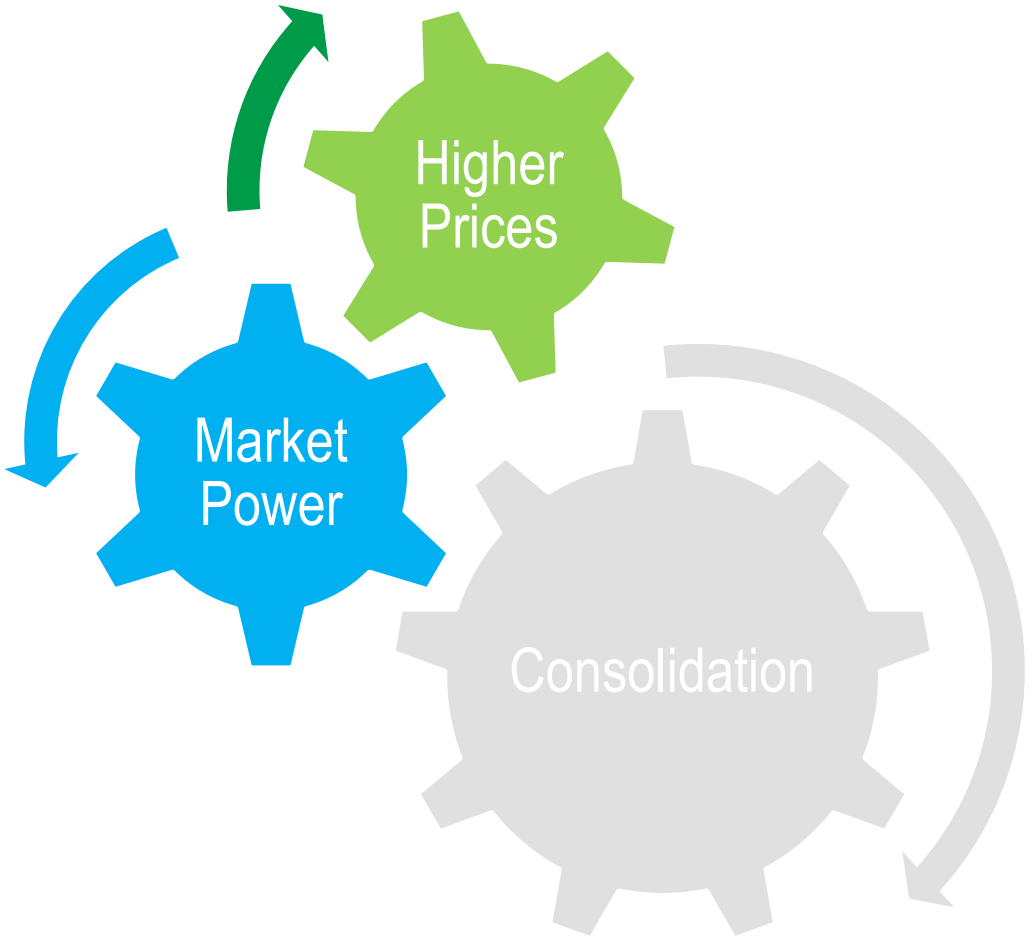
Georgia State University | COLLEGE OF LAW

What drives high prices?

It all comes down to market power

Market power is amassed through consolidation (horizontal mergers, vertical consolidation, joint ventures)

Higher priced providers are not higher quality



What Can States Do to Address Horizontal and Vertical Consolidation?

Policy Approach	Tools
1. Gather data	• All-payer claims databases • Enhanced hospital financial reporting and hospital cost tool
2. Active state purchasing	• Reference-based pricing for state employee health plans
3. Mitigate consolidation and abuses of market power	• Pre-transaction review and approval proposed transactions • Banning anticompetitive health insurance contract terms
4. Oversee hospital cost growth	• Health care cost growth benchmarks
5. Limit hospital rates	• Health insurance rate review – affordability standards • Limit outpatient facility fees • Public option • All-payer model, global hospital budgets

What Can States Do to Address Horizontal and Vertical Consolidation?

Policy Approach	Tools
1. Gather data	• All-payer claims databases • Enhanced hospital financial reporting and hospital cost tool
2. Active state purchasing	• Reference-based pricing for state employee health plans
3. Mitigate consolidation and abuses of market power	• Pre-transaction review and approval proposed transactions • Banning anticompetitive health insurance contract terms
4. Oversee hospital cost growth	• Health care cost growth benchmarks
5. Limit hospital rates	• Health insurance rate review – affordability standards • Limit outpatient facility fees • Public option • All-payer model, global hospital budgets

Health Insurance Rate Review as a Tool

- Use health insurance rate review authority to implement health care affordability standards
- Since 2010, Rhode Island has used its Office of Health Insurance Commissioner to control hospital costs through insurance rate review
  - OHIC authority: individual, small group, and fully insured large group markets
- Includes an affordability standard as a criteria for insurance rate approval:
  - Insurers must limit hospital rate increases to the rate of inflation (Urban CPI) + 1%

Georgia State University | COLLEGE OF LAW

What was the effect?

By Aaron Baum, Zirui Song, Bruce E. Landon, Russell S. Phillips, Asaf Bitton, and Sanjay Basu

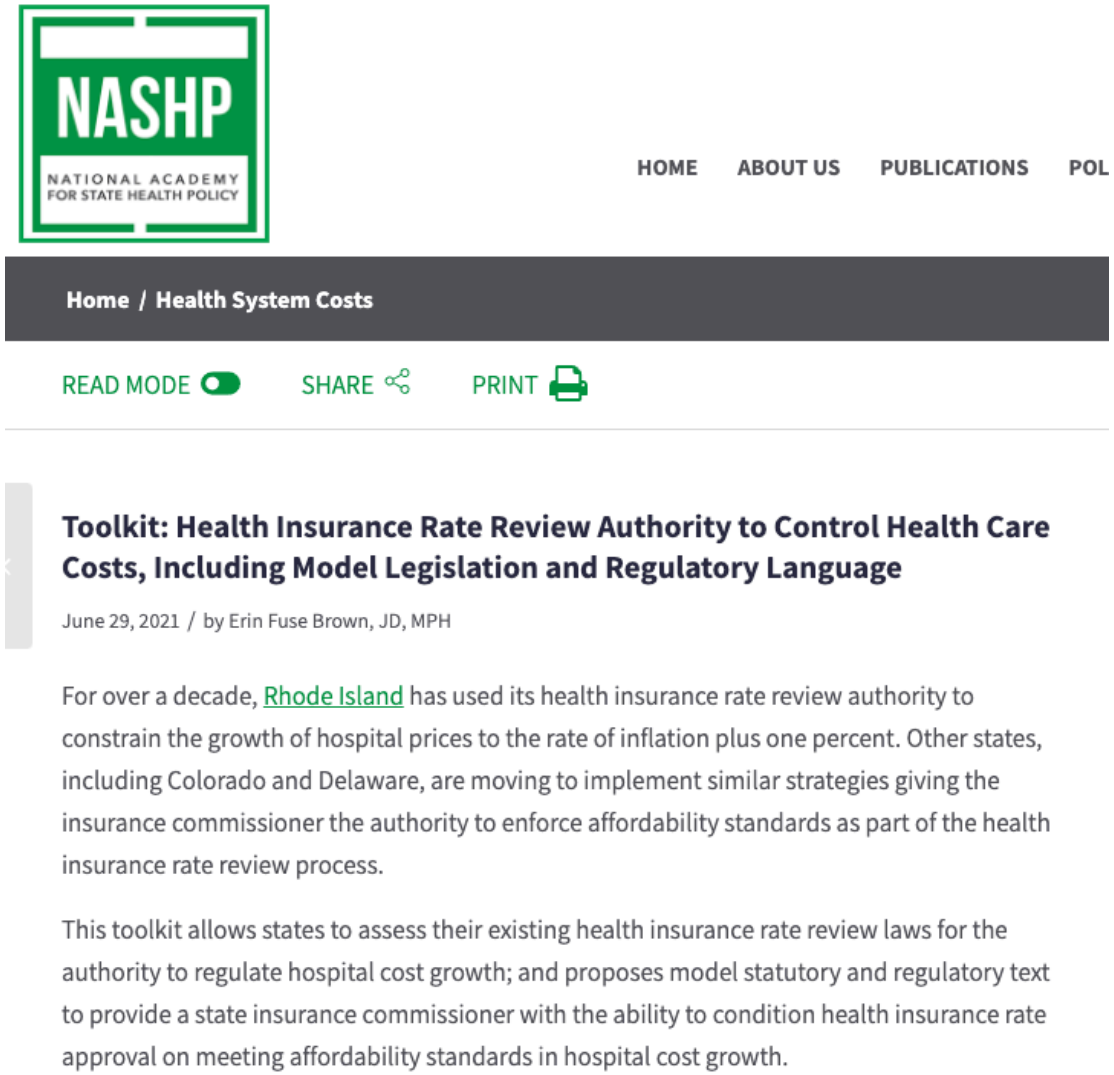
Health Care Spending Slowed After Rhode Island Applied Affordability Standards To Commercial Insurers

DOI: 10.1377/hlthaff.2018.05164
HEALTH AFFAIRS 38,
NO. 2 (2019): 237–245

"Total spending growth decreased, driven by lower prices concordant with the adoption of price controls. Quality measures were unaffected or improved. The Rhode Island experience indicates that states may be able to slow total commercial health care spending growth through price controls while maintaining quality."

Georgia State University | COLLEGE OF LAW

NASHP Toolkit – Insurance Rate Review Authority


NASHP
NATIONAL ACADEMY FOR STATE HEALTH POLICY

HOME ABOUT US PUBLICATIONS POL

Home / Health System Costs

READ MODE SHARE PRINT

Toolkit: Health Insurance Rate Review Authority to Control Health Care Costs, Including Model Legislation and Regulatory Language

June 29, 2021 / by Erin Fuse Brown, JD, MPH

For over a decade, Rhode Island has used its health insurance rate review authority to constrain the growth of hospital prices to the rate of inflation plus one percent. Other states, including Colorado and Delaware, are moving to implement similar strategies giving the insurance commissioner the authority to enforce affordability standards as part of the health insurance rate review process.

This toolkit allows states to assess their existing health insurance rate review laws for the authority to regulate hospital cost growth; and proposes model statutory and regulatory text to provide a state insurance commissioner with the ability to condition health insurance rate approval on meeting affordability standards in hospital cost growth.

- NASHP Toolkit:
- Assess your state's existing rate review authority
- Model statutory authority for a health insurance affordability standard
- Model regulations to implement the affordability standard

Georgia State University | COLLEGE OF LAW

NASHP Toolkit - Assess

There are 3 main questions to assess existing rate review authority to implement an affordability standard:

1. **Type of rate review** (prior approval vs. file-and-use)
2. **Scope of rate review** (which market segments?)
3. **Consumer protection authority** (does your rate review law include a duty to protect consumers, promote the public interest, or improve affordability?)

NASHP Toolkit – Model Statutory Authority

Powers and Duties of the Commissioner

(A) With respect to health insurance as defined in [code section], the Commissioner shall discharge the powers and duties of office to:

(1) Protect the public interest and the interests of consumers;

(2) Encourage the fair treatment of providers;

(3) View the health care system as a comprehensive entity and encourage and direct insurers towards policies that advance the welfare of the public through overall efficiency, **affordability**, improved health care quality, and appropriate access.

Rate Filing Requirements

(A) In discharging the duties of the Office, including but not limited to the Commissioner's decisions to approve, disapprove, modify or take any other action authorized by law with respect to a health insurer's filing of health insurance rates or rate formulas under [cite to code provisions], **the Commissioner may consider whether the health insurer's products are affordable and whether the carrier has implemented effective strategies to enhance the affordability of its products**.

(B) The Insurance Commissioner may promulgate regulations to carry out the powers and duties of this Section, including without limitation, to implement rate filing requirements, **establish affordability standards**, impose penalties, and ensure compliance with this section.

NASHP Toolkit – Model Regulations

(A) Affordability Standard. Each health insurer shall include in its hospital contracts a provision that agrees on rates for each contract year. Review and prior approval by the Commissioner shall be required if:

(1) The aggregate rate increase, calculated as the weighted average increase for inpatient and outpatient services, is greater than the Consumer Price Index for All Urban Consumers: All Items Less Food and Energy("CPI-Urban") percentage increase, as determined by the Commissioner by [October 1] each year based on the most recently published United States Bureau of Labor Statistics data, plus one percent (CPI-Urban + 1%).

(B) Separation of Inpatient and Outpatient Services. The Commissioner may, in his or her discretion, calculate average rate increases separately for inpatient and outpatient services and require that neither the inpatient nor the outpatient average rate increases in any hospital contract exceed CPI-Urban plus 1 percent.

Further considerations

- Staffing capacity, budget, expertise?
- Consider using existing market conduct examination authority, charging cost to insurers.
- Extend to professional services?
- How to address increased costs from utilization (not just price)?
- Once established, consider adjustments to address distributional inequities (e.g., rural, critical access, small hospitals).
- How to harmonize with a state health cost growth benchmark?

- But keep it simple, especially initially

Resources:

- NASHP Blog: Insurance Rate Review as a Hospital Cost Containment Tool: Rhode Island's Experience
- NASHP Toolkit: Health Insurance Rate Authority to Control Health Care Costs—Model Legislation and Regulatory Language
- Rhode Island's affordability standard rules: 230 R.I. Code R. 20-30-4.10.
- Health Affairs article: Baum, Aaron, et al. "Health care spending slowed after Rhode Island applied affordability standards to commercial insurers." Health Affairs 38.2 (2019): 237-245.