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
The Problem: High Prices Driven by Consolidation

% of markets that are highly concentrated:

- 65% of specialty physician markets
- 57% of insurer markets
- 39% of primary care markets

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.
### Policy Approach Tools

<table>
<thead>
<tr>
<th>Policy Approach</th>
<th>Tools</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Gather data</td>
<td>• All-payer claims databases</td>
</tr>
<tr>
<td></td>
<td>• Enhanced hospital financial reporting and hospital cost tool</td>
</tr>
<tr>
<td>2. Active state purchasing</td>
<td>• Reference-based pricing for state employee health plans</td>
</tr>
<tr>
<td>3. Mitigate consolidation and abuses of market power</td>
<td>• Pre-transaction review and approval proposed transactions</td>
</tr>
<tr>
<td></td>
<td>• Banning anticompetitive health insurance contract terms</td>
</tr>
<tr>
<td>4. Oversee hospital cost growth</td>
<td>• Health care cost growth benchmarks</td>
</tr>
<tr>
<td>5. Limit hospital rates</td>
<td>• Health insurance rate review – affordability standards</td>
</tr>
<tr>
<td></td>
<td>• Limit outpatient facility fees</td>
</tr>
<tr>
<td></td>
<td>• Public option</td>
</tr>
<tr>
<td></td>
<td>• All-payer model, global hospital budgets</td>
</tr>
</tbody>
</table>
What Can States Do to Address Horizontal and Vertical Consolidation?

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

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.
NASHP 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
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?)
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.
(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
