

# How to Make Health Insurance More Affordable by Strengthening Rate Review Laws



## Introduction

For far too many families and small business owners in the United States, the cost of health insurance, driven by health care prices, is already too high — and prices keep rising. Fortunately, states can help rein in health insurance prices by strengthening health insurance rate review laws, including giving consumers a voice in the rate review process. State insurance regulators can also take steps to constrain hospital and health care provider price increases that are built into health insurance rates. Although health care advocates frequently face challenges as they work to strengthen rate review laws, several states are leading the way to overcome these barriers. For example, with advocates' involvement, Illinois lawmakers enacted legislation to strengthen their state's health insurance rate review law in 2023.<sup>1</sup> Using Illinois as a model, advocates in other states can work to strengthen their state laws and procedures. This paper describes goals and approaches to help address high and rising health insurance prices and the underlying provider prices that are driving unaffordable care. It also describes the political challenges that advocates should be prepared to face and can be used as a road map to creating a robust rate review process that can help lower health care costs and increase the financial security of families.

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## Rate review success stories

The following examples are among the jurisdictions that will save residents millions of dollars in 2023 by significantly lowering rates from insurers' initial proposals.

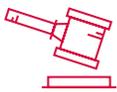
- » Rhode Island will save residents nearly \$22.9 million after it lowered proposed rate increases for individuals and small and large businesses.<sup>2</sup>
- » New York will save New Yorkers \$799.5 million, including \$632.4 million for small businesses.<sup>3</sup>
- » The District of Columbia will save residents nearly \$17 million.<sup>4</sup>

## The basics of health insurance rate review

Each year, under federal law, insurers must submit to state and/or federal regulators for review their proposed premium rates for health insurance sold to individuals and small groups.<sup>5</sup> Insurers also submit a justification for those rates, which includes the insurer's predictions of how enrollees' claims costs will change (including their use of services and the prices of their care), the insurer's administrative costs, and how changes in the pool of enrollees (such as their age and health) may alter costs. Current federal rules require that, at a minimum, either a state regulator or the federal government review proposed rate increases of 15% or more.<sup>6</sup> If the government determines that the rate increase is excessive, unjustified or discriminatory, the U.S. Centers for Medicare & Medicaid Services posts this information on a public website. Insurers that proceed with an unjustified rate increase must post on their own website the government's finding that the rate is unjustified. Health insurance exchanges take the finding into account in determining whether the plan should be sold on the marketplace.<sup>7</sup>

Under state laws, many states do much more to constrain health insurance rates. Many states, called prior approval states, do not allow insurers to implement rates that the state has found to be excessive, unjustified or discriminatory. Some states host public hearings to gather information on consumer needs and bring in actuaries to provide expert opinions regarding the reasonableness of proposed rates. Some forward-thinking states also examine rising provider prices, which are a major driver of rate increases, and set health care cost growth targets.<sup>8</sup>

**Advocates who want their state to develop more robust rate approval procedures can keep the following four goals in mind as they work to strengthen their state's review processes.**



### **Goal 1: Ensure your state agency has the authority to reject, modify or approve proposed health insurance premium rates**

States have varying levels of authority to require insurers to lower their proposed annual premium rates. In most states, insurance departments review proposed rate increases in the individual and small-group markets that exceed 15% (a federal requirement) to determine if they are reasonable.<sup>9</sup> However, a 15% increase in premiums is untenable for many people. It could mean, for example, paying an additional \$3,370 per year for a family of four.<sup>10</sup> Some states lack authority to deny rate increases that are lower than 15% even if they are baseless or unreasonable.

Furthermore, many states lack authority to reject proposed rate increases that are unreasonable before they go into effect. Nine states lack prior approval authority in the individual market, including Arizona, Georgia, Idaho, Indiana, Mississippi, Missouri, Montana, Texas and Wisconsin. These nine states plus five more – Delaware, Nebraska, South Carolina, Utah, and Wyoming – lack prior approval authority in the small-group market.<sup>11</sup> Instead of requiring each proposed rate to be

approved by the state before it goes into effect, these states operate with a “file-and-use system,” allowing insurers to file the justification for their rate increases with the insurance department, but then use the new rates without awaiting the state’s approval. Some states with file-and-use systems negotiate with carriers about their rates. However, if states are unable to compel health plans to reduce rates before they go into effect, small businesses and families may still be burdened with unreasonable and unaffordable premium prices during the negotiation process.<sup>12</sup> Advocates can work to pass legislation to require prior approval of all health insurance rates in order to constrain costs.<sup>13</sup> Additionally (or alternatively), advocates can ask their state insurance regulators to question rate filings and to put out strong guidance in advance about what cost assumptions the state does and does not expect to see reflected in rates for the coming year.<sup>14</sup>




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## **Goal 2: Create a rate review process that includes:**

- » Examining the affordability of insurance price increases
- » Providing clear and transparent public information on proposed rate increases
- » Including public representation in the rate review process

### ***Examining affordability***

While most states do have some form of a rate review process, it is critical that the process is robust enough to be effective as well as transparent and public. Insurance price increases may be too high if insurance becomes unaffordable to individuals and businesses, if insurers earn exorbitant profits and build ever-higher reserves, or if insurers are no longer able to negotiate reasonable prices with health care providers. Rate review should address all these possibilities.

Rhode Island’s law and regulations require rates to be consistent with the interests of consumers and in compliance with affordability standards.<sup>15</sup> Under Vermont law, a board determines whether a proposed rate “is affordable, promotes quality care, promotes access to health care, protects insurer solvency, and is not unjust, unfair, inequitable, misleading, or contrary to the laws of this State.”<sup>16</sup>

### ***Providing public information***

States should post information about proposed rates and the reasons for those increases on their websites for public review. Some states do this well. States such as Connecticut, Oregon and Rhode Island provide public notices of proposed increases, provide online explanations to help people understand the proposals, allow public review of the filings (without redacting important information), and give people opportunities to comment on proposed increases in writing and through public meetings or hearings.<sup>17</sup> Maine and New York require insurers to notify plan enrollees of proposed increases individually.<sup>18</sup>

### ***Including public representation***

People most affected by rate increases provide powerful public testimony that humanizes the impact of rate increases. Rate setting is a technical process, so involvement by official bodies charged with representing consumers' interests is also critical. These bodies can help people prepare their testimony, and can bring in legal and actuarial resources to question insurers' justifications for their rates. Bodies that represent residents in the rate review process include the Vermont Office of the Health Care Advocate, the Connecticut Office of the Healthcare Advocate, the Connecticut and Rhode Island attorneys general, the Colorado consumer ombudsman, and a state-based marketplace in the District of Columbia.<sup>19</sup>




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### **Goal 3: Incorporate cost targets to constrain provider pricing**

After a state has a rate review framework in place, incorporating cost benchmark targets to ensure that the prices health care providers set are fair and rational can help create reasonable insurance premium pricing.

As medical monopolies have used loopholes and questionable practices to push the prices of health care higher across the country, it is critical that the rate review process addresses these underlying costs. For example, Rhode Island regulations state that if a health insurer's contract with a hospital include an average rate increase that is greater than the urban consumer price index plus 1%, the contract must be reviewed and approved by the health insurance commissioner.<sup>20</sup> Colorado, Nevada and Oregon are among states that have set cost growth targets.<sup>21</sup> Strategically, it can be politically challenging to work on insurer pricing and provider pricing laws simultaneously, so many advocates think about this as a multiyear process.




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### **Goal 4: Keep cost sharing as low as possible for people with modest incomes**

State leaders can ensure more people have access to lower-cost plans by being thoughtful about the way they set prices within their marketplaces. States can set rules for how insurance carriers price their silver-level plans in the individual market as compared with bronze, gold or platinum plans. If silver plans are priced correctly, many enrollees may be able to find silver plans that cost them \$0 in premiums or may be able to afford gold plans with lower cost sharing and better benefits. This is because the federal government calculates premium tax credits based on the second-lowest-cost silver plan in a state's individual marketplace. The higher the price of that plan, the more premium tax credits people will receive.

Silver plans in many states are underpriced relative to other “metal” levels, ultimately making insurance more expensive for many people. State laws or regulations should:

1. Require health insurance carriers, as they are setting premiums, to take into account the entire population of people in the state who receive cost-sharing reductions. States should prescribe a specific percentage that all carriers should use in setting prices for marketplace silver plans to account for cost-sharing reductions.
2. Require health plans to price enrollees as part of a single risk pool. For example, they should not assume that people with lower incomes will use fewer services. Health insurance carriers should be permitted to vary premiums only by differences in the generosity of plans and not based on characteristics of the enrollees.



For more information and sample regulatory guidance, see Stan Dorn’s article titled “[How New Mexico Dramatically Reduced Marketplace Deductibles at Zero Cost to the State](#)” on *Health Affairs Forefront* from July 20, 2022, and the New Mexico Office of Superintendent of Insurance’s “[Plan Year 2022 ACA Individual Market Pricing Guidance](#),” dated May 28, 2021.<sup>22</sup>



### Challenges:

*Here are some arguments and questions from opponents you might confront during your campaign to strengthen health insurance rate review, based on Illinois advocates' experience:*

- » **Challenge:** Insurance rates are high everywhere, even in states with review processes.
- » **Response:** Insurance rates have been reduced significantly from insurers' initial requests in many states when the department of insurance has the authority to approve or reject rates.

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- » **Challenge:** The state department of insurance lacks staff capacity or expertise to conduct prior approval.
- » **Response:** Rate review is a vital function of the department of insurance, and funding and staffing should be prioritized to conduct prior approval. States can also contract out some functions, including actuarial expertise. States should look at the number of staff members devoted to rate review in states of similar size as a benchmark.

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- » **Challenge:** Public hearings aren't needed in the rate review process. They just open the state agency and insurers up to individuals' complaints about their specific insurance rates.
- » **Response:** Opportunities to understand affordability challenges and to question insurer assumptions are helpful overall to consumers to understand the underlying costs as well as the levers a state agency has or does not have to influence pricing. Hearings can also be politically helpful to regulators to provide evidence of needs and to strengthen their resolve in addressing pricing.

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- » **Challenge:** An office of consumer advocate is redundant to a state's insurance department. Why is it advantageous to the rate review process to have an independent advocate for consumers?
- » **Response:** The insurance department is seen as an adjudicator of rates and not necessarily an independent actor or a consumer advocate. An independent consumer advocate housed in a separate agency — such as the office of the governor, the marketplace board or the attorney general's office — is in a better position to analyze and address assumptions that may not be well grounded or in the best interest of consumers.

- » **Challenge:** Should provider pricing targets be built into the rate review process?
- » **Response:** If politically feasible, it can be helpful to build provider pricing benchmarks into the rate review process from the outset.<sup>23</sup> But states may not want to take on reviewing the prices of providers and health insurance plans at the same time, especially if providers and insurers each have politically powerful lobbies in state capitols. However, states like Rhode Island have gotten both health plans and providers to sign off on instituting cost growth benchmarks.

Note that legislators frequently receive large campaign contributions from insurers, which can make winning insurance reforms difficult.

### Useful political strategies

- » Identify a legislative champion in a position of leadership who is dedicated to carrying the legislation, even if it takes more than one session. This chief sponsor should use every available strategy, including educating other lawmakers, holding subject matter hearings, using research and other state examples, contacting media, forming coalitions and alliances with small businesses, etc.
- » Do sustained negotiation with the department of insurance to build the department's competency and expertise in the issue as well as educate the staff on research, other state examples and ways to "neutralize" opposition.
- » Foster relationships with advocates or regulators in other states whom you can lift up as models and who can respond quickly as needed to various issues that arise in negotiation.
- » Educate and partner with small-business owners, including spokespeople with a small-business perspective, who are key constituents in the district to talk to local legislators about the need for rate review. Form alliances with small-business organizations and associations to "neutralize" opposition from larger, more conservative chambers of commerce.
- » Identify target or key reporters who are covering the business of health insurance or related issues, and reach out to them via a news release or email pitch. Be prepared to set the groundwork when rate increases are filed as well as when a bill is in motion.
- » Consider administrative reforms that can be implemented while legislative change is pending or as an alternative to legislative action (for example, improved guidance from the insurance department about acceptable rating assumptions, funding for additional actuarial staff to represent public interest, etc.)

## Conclusion

Rate review is an important tool for ensuring that insurance premiums stay affordable for individuals and small businesses. If done well, rate review can also help to limit health care provider pricing abuses. Political dynamics in various states can make winning strong rate review laws difficult. However, evidence from other states, alliances between health advocates and the small-business community, and ongoing discussions with state regulators and legislative champions can bring about both administrative and legislative reforms — and in doing so, bring much needed relief to families suffering from unduly high health care prices.



## Endnotes

<sup>1</sup> Illinois Public Act 103-0106, <https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=103-0106>

<sup>2</sup> Rhode Island Office of the Health Insurance Commissioner, “2023 Commercial Health Insurance Rates Have Been Approved with Modifications,” press release, September 21, 2022, <https://ohic.ri.gov/news/press-releases-and-notice>.

<sup>3</sup> New York State Department of Financial Services, “DFS Announces 2023 Health Insurance Premium Rates, Saving New Yorkers \$799.5 Million,” press release, August 17, 2022, [https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr202208171](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202208171).

<sup>4</sup> District of Columbia Department of Insurance, Securities and Banking, “DC Announces 2023 Health Insurance Rates Half of Insurers Decrease Rates After District Review,” press release, September 26, 2022, <https://disb.dc.gov/release/dc-announces-2023-health-insurance-rates-half-insurers-decrease-rates-after-district-review>.

<sup>5</sup> 42 USC 300gg-94; 45 CFR Part 154.

<sup>6</sup> 45 CFR 154.200.

<sup>7</sup> 45 CFR 154.215, 154.225 and 154.230.

<sup>8</sup> For more details, see our longer report: Cheryl Fish-Parcham et al., *How Illinois Can Make Health Insurance More Affordable* (Washington, DC: Families USA and Shriver Center on Poverty Law, December 2022), [https://familiesusa.org/wp-content/uploads/2022/12/COV-2022-163\\_Illinois-Insurance-Report\\_1-17-23B.pdf](https://familiesusa.org/wp-content/uploads/2022/12/COV-2022-163_Illinois-Insurance-Report_1-17-23B.pdf).

<sup>9</sup> Oklahoma and Wyoming do not meet federal criteria, and so the U.S. Centers for Medicare & Medicaid Services reviews rates in those states. See U.S. Centers for Medicare & Medicaid Services, “State Effective Rate Review Programs,” CMS.gov, n.d., accessed May 18, 2023, [https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/rate\\_review\\_fact\\_sheet](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/rate_review_fact_sheet). Federal law requires either states or the Centers for Medicare & Medicaid Services to determine whether rate increases are unreasonable (42 USC 300gg-94). Regulations further specify that reviewers, at a minimum, must examine the assumptions the health insurer used to develop proposed rates; past projections and actual experience; and the impact of changes in the following: medical trend, utilization by service category, cost sharing, benefit changes, risk sharing and risk adjustment, reserve needs, administrative costs, medical loss ratio, capital, and surplus. In addition, information about the justification for proposed increases must be made public and open for public comment (45 CFR 154.205).

<sup>10</sup> Based on average family premium for 2022 from “2022 Employer Health Benefits Survey,” KFF, October 27, 2022, <https://www.kff.org/report-section/ehbs-2022-section-1-cost-of-health-insurance/#:~:text=The%20average%20annual%20premiums%20in,and%20%2422%2C463%20for%20family%20coverage>.

<sup>11</sup> Sabrina Corlette and Vrudhi Raimugia, “Authority to Review Health Insurance Premium Rate Increases: A 50-State Analysis,” Unpublished Memorandum provided to Shriver Center on Poverty Law for Illinois Legislative Hearing. Georgetown University, McCourt School of Public Policy, Center on Health Insurance Reforms.

<sup>12</sup> Federal rules about disclosure of unreasonable rates can be found in 45 CFR 154.225 and 154.230. For a description of how some file-and-use states have nonetheless pressed plans to reduce rates, see *Rate Review: Spotlight on State Efforts to Make Health Insurance More Affordable* (Menlo Park, CA: Kaiser Family Foundation, December 2010), <https://www.kff.org/wp-content/uploads/2013/01/8122.pdf>.

<sup>13</sup> The Shriver Center on Poverty Law in Illinois is working for such legislation in 2023. A few states, such as Connecticut (CGS § 38a-183), New York (Department of Financial Services webpage, “Health Insurance Rate Review FAQs,” [https://www.dfs.ny.gov/consumers/health\\_insurance/rate\\_review\\_faqs](https://www.dfs.ny.gov/consumers/health_insurance/rate_review_faqs)), Rhode Island (Office of the Health Insurance Commissioner webpage, “Rate Review,” <https://ohic.ri.gov/regulatory-review/rate-review>), and Vermont (8 VSA 4062 and 18 VSA 9375), also review the rates of state-regulated large-group insurers or at least state-regulated large-group HMOs.

<sup>14</sup> See New Mexico’s guidance for plan years 2023 and 2024: “2023 Plan Year Individual and Small Group Market Rate Filing Guidance,” New Mexico Office of Superintendent of Insurance, effective January 1, 2023, [https://www.osi.state.nm.us/wp-content/uploads/2022/04/2023PY-QHP-Issuer-Rate-Guidance\\_Final.pdf](https://www.osi.state.nm.us/wp-content/uploads/2022/04/2023PY-QHP-Issuer-Rate-Guidance_Final.pdf); “2024 Plan Year Individual and Small Group Market Rate Filing Guidance,” New Mexico Office of Superintendent of Insurance, n.d., accessed July 11, 2023, <https://a.storyblok.com/f/132761/x/31c95dc31f/2024py-qhp-issuer-rate-guidance.pdf>.

<sup>15</sup> 230-RICR-20-30-4 and Rhode Island General Laws Titles 27 and 42.

<sup>16</sup> 8 V.S.A. § 4062.

<sup>17</sup> For more examples and citations, see Fish-Parcham et al., “How Illinois Can Make Health Insurance More Affordable,” 9–14.

<sup>18</sup> Maine Insurance Code, Title 24-A, Chapter 33 §2735-A; Elisabeth Benjamin, vice president of health initiatives for Community Service Society, interview by author, August 30, 2022.

<sup>19</sup> Maine Insurance Code, Title 24-A, Chapter 33 §2735-A; Benjamin, interview by author.

<sup>20</sup> 230-RICR-20-30-4. Rhode Island’s rules also set targets for adequate spending on primary care and behavioral health. See also Erin Fuse Brown, “Toolkit: Health Insurance Rate Review Authority to Control Health Care Costs, Including Model Legislation and Regulatory Language,” National Academy for State Health Policy, June 29, 2021, <https://nashp.org/toolkit-health-insurance-rate-review-authority-to-control-health-care-costs-including-model-legislation-and-regulatory-language/>.

<sup>21</sup> CO 10-16-13 See also Adney Rakotoniaina, “How States Use Cost-Growth Benchmark Programs to Contain Health Care Costs,” National Academy for State Health Policy, update January 18, 2023, <https://nashp.org/how-states-use-cost-growth-benchmark-programs-to-contain-health-care-costs/>; Joel Ario, Kevin McAvey, and Amy Zhan, *State Benchmarking Models: Promising Practices to Understand and Address Health Care Cost Growth* (Manatt Health, June 2021), [https://www.manatt.com/Manatt/media/Documents/Articles/RWJF\\_State-Benchmarking-Models\\_June-2021\\_i\\_FOR-WEB.pdf](https://www.manatt.com/Manatt/media/Documents/Articles/RWJF_State-Benchmarking-Models_June-2021_i_FOR-WEB.pdf); “Colorado Option,” Colorado Department of Regulatory Agencies Division of Insurance, accessed May 10, 2023, <https://doi.colorado.gov/insurance-products/health-insurance/health-insurance-initiatives/colorado-option#:~:text=Health%20insurance%20plans%20are%20required%20to%20lower%20premiums.rate%20review%20and%20a%20new%20public%20hearing%20process.>

<sup>22</sup> Illinois House Bill 2296, passed both Houses May 26, 2023.

<sup>23</sup> Rakotoniaina, “Cost-Growth Benchmark Programs”; Ario, McAvey, and Zhan, *State Benchmarking Models*; Ann Hwang et al., “Implement a Health Care Cost Growth Target” in *State Strategies for Slowing Health Care Cost Growth in the Commercial Market* (Commonwealth Fund, February 2022), [https://www.commonwealthfund.org/sites/default/files/2022-02/Hwang\\_health\\_care\\_cost\\_growth\\_strategy\\_01\\_target.pdf](https://www.commonwealthfund.org/sites/default/files/2022-02/Hwang_health_care_cost_growth_strategy_01_target.pdf).



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