Health Insurance Rate Review: Why Prior Approval Rate Regulation is Necessary to Protect Consumers

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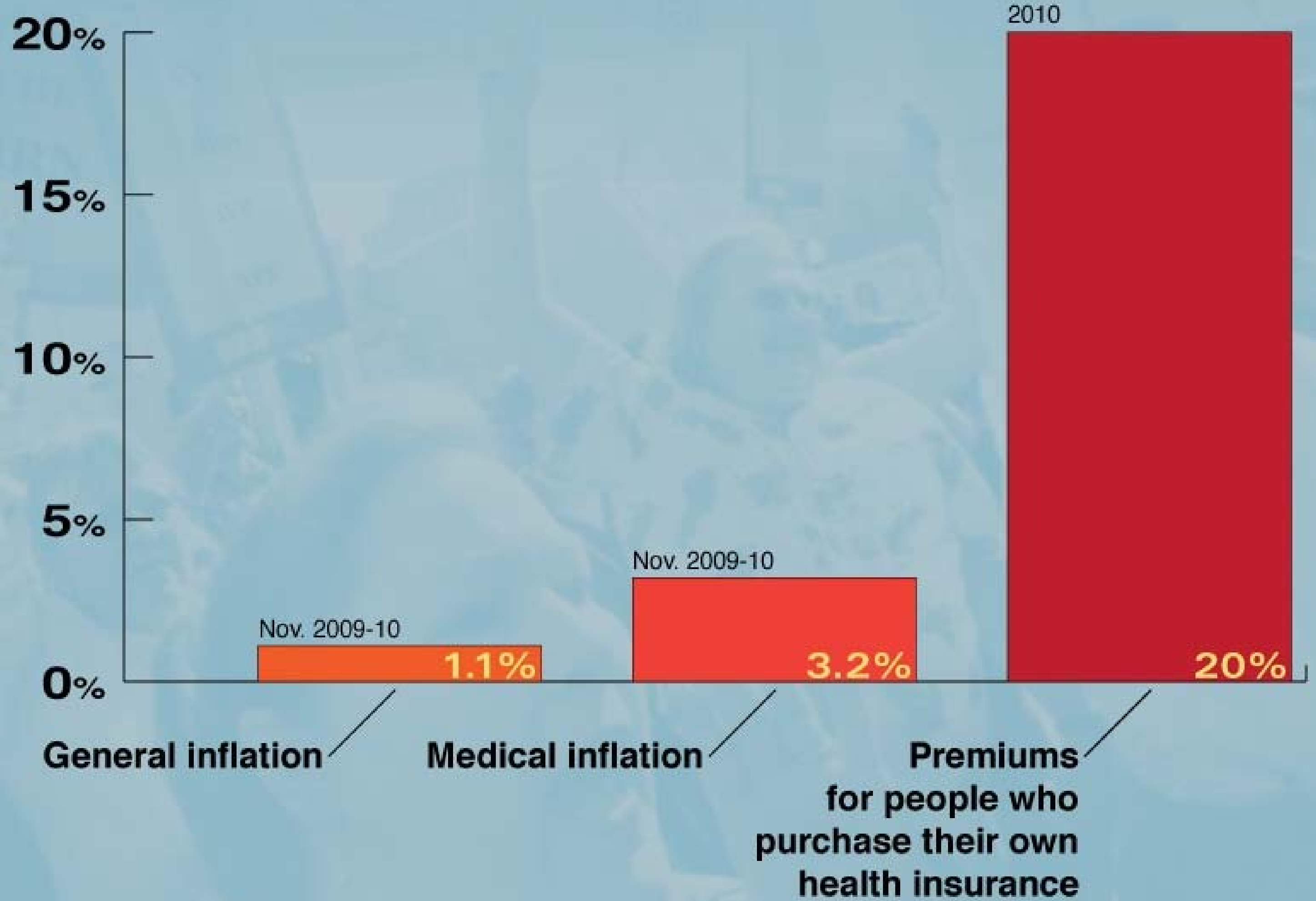
Insurance Regulation

- Consumer Watchdog's founder, Harvey Rosenfield, authored California's Proposition 103
- Approved by voters in 1988 after several years of dramatic auto insurance rate increases, and tightened enforcement of the state's mandatory auto insurance law
- "Prior approval" regulation
- Applies to auto, homeowners and business insurance

Proposition 103 is a model for regulation of the health insurance industry.

Health Insurance Premium Increases Leap Ahead of Inflation



Sources: Bureau of Labor Statistics, Kaiser Family Foundation

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Rate hike complaints at ConsumerWatchdog.org are increasing

“Our policy covers three people: myself, my husband, and our three year-old son. We all have perfect health. We run our own small business and so must carry our own insurance. Our consecutive rate increases are $124 in January and $224 in March, bringing our rate to $644 per month. This is prohibitively expensive and will force us to make some difficult choices about coverage for our family. We are considering finding insurance to cover only our son.”

Kerry, Alameda CA

“The[y] raised my insurance 32% since Jan of 2010, this is excessive and should be illegal. I am self employed and pay insurance out of my pocket. They now want to charge me $569.00 per month.”

Susan, Sacramento CA

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Affordable Care Act

Requires every American to provide evidence of health insurance

Does not regulate rates

Individual mandate won't work without oversight of what health insurers charge

Rate regulation in the states

Basic measure of effectiveness is “prior approval” authority:

State insurance regulator must review and approve health insurance rates before they take effect

State laws differ widely

- Kaiser Family Foundation reports that 34 states and DC have prior approval authority over some portion of both the individual and small group markets
- National Conference of State Legislatures reports 26 states with prior approval laws

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Rate regulation in the states

Nominal authority to regulate rates does not necessarily mean strong oversight

- Many states are limited to regulating a market or type of company
  - Just the individual market, HMOs, or non-profits
- Law can be weakened by:
  - Loopholes that allow insurers to escape regulation.
  - Lack of resources, staff, or political inclination
    - In 2009, 5 states did not have a single life and health insurance actuary on staff
    - Another 17 states had just one (or part-time)

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Sources: Kaiser Family Foundation
National Association of Insurance Commissioners

California's Proposition 103:
Three Elements of Effective Regulation

Insurance Commissioner must review and approve rates before they take effect

Any member of the public has the right to intervene in rate proceedings

Made Insurance Commissioner an elected office

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California's Proposition 103:
Insurers And Consumers Benefit

Slowest-growing premiums in the nation

California auto insurance premiums increased just 12.9 percent, compared to an average national increase of 50 percent (1989-2005)

Consumers save

Drivers have saved $61.8 billion on auto insurance since enacting Proposition 103, an average of $1,670 per Californian

Competitive market

California has the fourth most competitive auto insurance market in the nation

Insurers thrive

Auto insurers had average profits of 10.1% over the ten years ending in 2006

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Source: Consumer Federation of America

California's Proposition 103:
Prior Approval

A rate may not take or remain in effect that is excessive, inadequate or unfairly discriminatory.

Regulations set standards insurers must follow when setting rates:

- Cap the rate of return.
- Establish ceilings for executive salaries.
- Set an overall limit on expenses at the industry average, rewarding insurers who operate more efficiently with a higher rate of return.
- Expenses in excess of the limit cannot be included in the rate, giving insurers an incentive to reduce costs.

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California's Proposition 103:
Prior Approval

Prior approval regulations cont.

- Company-specific trend
- Limit the amount insurers can set aside as surplus or reserves.
- Insurers may not pass on to consumers the costs of:
  - Lobbying
  - Political contributions
  - Institutional advertising
  - Bad faith damage awards
  - Fines or penalties

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California's Proposition 103:
Public Intervenor System

Public hearings

- Right for the public to challenge any rate.
- Insurance Commissioner must hold a hearing when a member of the public files a formal petition and the rate change is 7% (personal insurance) or 15 % (commercial).

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California's Proposition 103:
Public Intervenor System

Consumer participation

- Any member of the public who participates in a rate challenge may seek compensation for "reasonable" advocacy and witness fees.
  - Fees awarded if the person represents the interests of consumers and makes a "substantial contribution" to the resulting rate order.
- Funded intervention is critical to protecting consumers when insurance departments have few resources, or fail to adequately scrutinize insurers' claims.
- Ensures professional representation of consumers in rate proceedings and public hearings.

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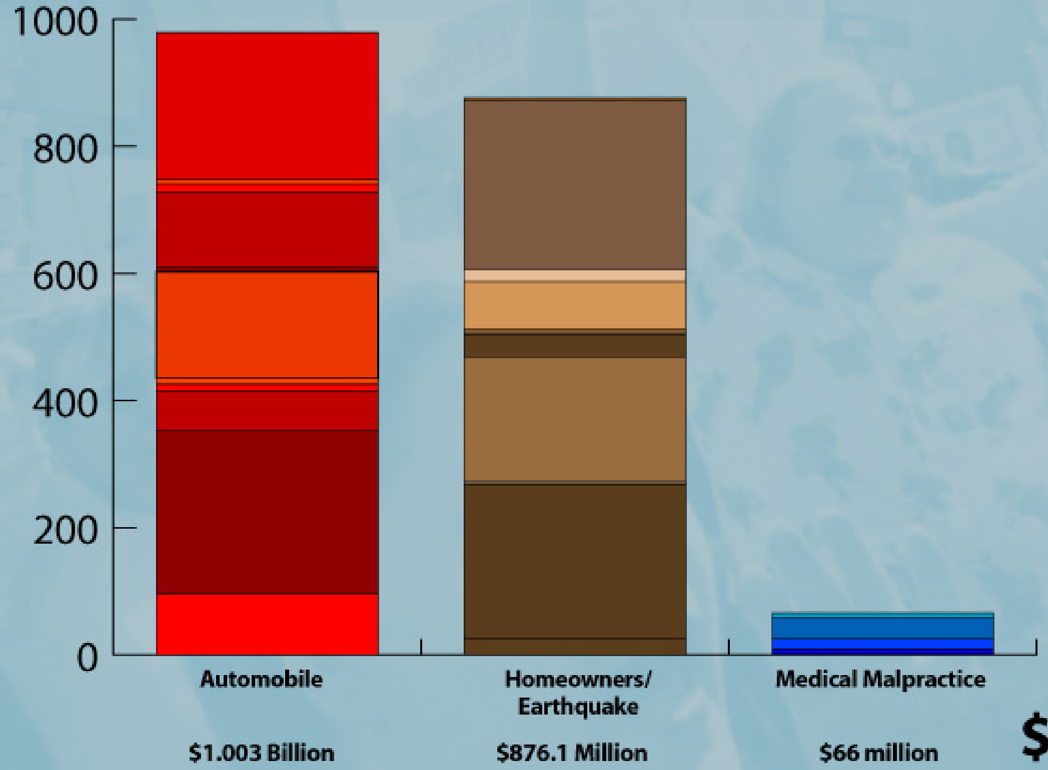
CA Prop. 103 (2003-2010)

Consumer Watchdog rate challenge savings



Automobile

21st Century	95.9
Allstate	258.0
Auto Club	61.6
Calif Cas. Indem. Exch.	9.6
Executive Risk (Chubb Group)	1.2
Explorer	8.3
Farmers Ins Exchange	168.0
Hartford	7.0
Mercury	118.2
Mid-Century	12.4
Liberty Mutual Auto	24.1
Progressive Choice	7.0
State Farm Mutual Auto Ins. Co	231.4
Topa Insurance	0.3

SubTotal: $1.003 Billion

Homeowners/Earthquake

AAA of Northern Cal.	26.0
Allstate - 2008	242.0
American Modern HO	2.1
CA Casualty Ins. Co.	3.2
Farmers	195.5
Fireman's Fund	35.1
Fireman's Fund Eq - 2008	2.2
Geovera - 2008	5.7
Safeco	75.1
Safeco - Earthquake	19.3
State Farm - 2006	266.1
State Farm - Mobilehomes	3.8

SubTotal: $876.1 million

Medical Malpractice

Amer. Casualty of Reading, PA	1.6
Medical Protective Co.	6.4
National Union	0.9
Norcal Mutual	16.5
SCPIE	34.0
The Doctors Co. - 2004	6.6

SubTotal: $66 million

$1.9451 Billion Total Savings

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California's Proposition 103:
Elected Insurance Commissioner

Public Accountability

- Independent regulator
- Answers directly to the voters
  - California Commissioner Quackenbush resigned in disgrace in 2000 in a scandal involving special treatment for insurance industry donors
  - Every Commissioner elected since then has declined to take insurance industry campaign contributions

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Allstate
A Sample Rate Challenge

Allstate sought a rate increase of 12.2% for 1.1 million homeowners

- Increase included a higher profit margin than allowed under regulations
- Consumer Watchdog intervened
  - Allstate's net income for 2006 alone was approximately $5 billion; Total shareholder return was 590% between 1994 and 2006.
- Allstate was ordered to *reduce* rates by 28.5%
- $242 million in annual savings for policyholders

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Source: Allstate 2007 Stockholder Meeting Slides

The Affordable Care Act
No rate regulation

Rate review

- No authority for states or HHS to modify or deny rate changes, or order rebates
- States or HHS must review rate increases of 10% or greater and determine if they are “unreasonable”
  - The definition of “unreasonable” varies depending on whether HHS or states do review
  - Health insurers must publicly justify rate increases of 10% or greater, but states may limit this disclosure

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The Affordable Care Act
No rate regulation

Medical loss ratio

- Insurers must spend 80 - 85% of premiums on medical care and health quality improvements
  - In the absence of prior approval, this provision actually gives insurers an incentive to pay doctors and hospitals more -- in order to let premiums rise and increase their own income

MASSACHUSETTS

Despite the individual mandate Massachusetts has the highest health insurance premiums in the nation, because it relied on the market instead of regulation to set rates.

If the mandate impacted premiums, so did many elements of the reform law:

- Premium shift from individuals to small businesses when markets merged
- Shift to lower benefit, cheaper policies, including Young Adult Plans sold through exchange
- Exchange holds down rates for subsidized plans through competitive bidding
- 75% of newly insured are subsidized

Premiums continue to rise, forcing state action to regulate rates:

- Department of Insurance rate challenges, use of prior approval
- Limits on surplus, administrative costs

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Sources: Kaiser Family Foundation, Massachusetts

Division of Health Care and Finance Policy

CALIFORNIA

Examples of State Regulation

Prior approval: None. Insurer must meet 70% medical loss ratio.

Blue Shield of California requested a rate hike of up to 59% for some consumers.

- Blue Shield refused the Insurance Commissioner's request to delay the increase so Insurance Dept. could review.
- The company will submit the filing to an independent actuary.
- However, without a legal standard for what constitutes an excessive rate, another review will do little more than check Blue Shield's math.

Without authority to reject or modify rates, the Insurance Commissioner cannot delay the increase, or prevent Blue Shield from implementing excessive rates.

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CONNECTICUT

Examples of State Regulation

Prior approval: Individual market and some small group

Anthem Blue Cross proposed two rate increases.

First: Proposed rate hikes of up to 47% on non-grandfathered individual plans

- Approved despite failure by Anthem to justify the hike.
- The Connecticut Attorney General found:
  - No documentation explaining Anthem's cost projections
  - Insurance Dept. did not examine Anthem's profitability
  - Anthem refused to report or document medical loss ratio
  - Although Anthem blamed increases on consumer protections in the ACA, the increase far exceeded the impact of these changes projected by industry competitors and the government

CONNECTICUT

Examples of State Regulation

Second: Proposed rate hike of up to 20% on grandfathered individual plans.

- Insurance Dept. held public hearings, examined the rate filing, and rejected the rate increase.
- Insurance Commissioner found that Anthem's projected claim cost trends were excessive, and that no increase was justified.

"…the current rates are actuarially sound, and are adequate, not excessive and not unfairly discriminatory in accordance with [the law]."

Two different outcomes show need for:

- Standards regulators must follow to determine whether a rate is excessive
- Public intervenor system that allows consumers to act when regulators do not

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Strong rate oversight is necessary to protect consumers from unjustified premium increases

Without strong prior approval regulation, the ACA won't contain premiums.

Massachusetts' experience illustrates this, where a mandate to purchase insurance without strong standards for regulation finds the state scrambling to address premium increases.

Public dissatisfaction with an unaffordable mandate will threaten the ACA's larger reforms.

Strong rate oversight is necessary to protect consumers from unjustified premium increases

States must lead, enacting laws to require:

- Prior approval of all rates
- Disclosure of all rate filings
- A public right to intervene in rate proceedings

Federal backstop

- Congress should enact a federal fallback requiring HHS to review and approve rates if states fail to regulate

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