

The Role of State Regulation in Consumer-Driven Health Care

Timothy S. Jost, J.D.
Washington and Lee University

Mark A. Hall, J.D.
Wake Forest University

Research Objective

- Our study examined the role that the states are taking in regulating health savings accounts (HSAs) and high deductible health plans (HDHPs) for which federal tax subsidies are available under the Medicare Modernization Act (MMA) of 2003

Study Design

- 22 interviews with 32 state regulators, insurance company and trade association representatives, independent experts, and HSA advocacy groups
- Literature review
- Legal analysis

Principal Findings

1. Most states have responded affirmatively to the incentives offered by the MMA for consumer-driven health care by removing regulatory barriers to qualified HDHPs, such as:
 - Mandates requiring low or no deductibles
 - HMO deductible restrictions

Principal Findings

2. Many states have gone further, adopting or modifying state income tax laws to supplement the federal tax incentives provided through the MMA with state incentives.

Principal Findings

3. The states seem generally supportive of consumer-driven health care and reluctant to impede its progress with regulatory burdens.

Notable exceptions include New Jersey and New York

Concerns

4. In embracing consumer-driven health care, however, the states seem to have slighted their traditional regulatory concerns.

Problematic issues include:

- Financial accountability of non-bank HSA administrators
- Reduced access to insurance for higher risk subscribers

Concerns

5. The states also have not adequately worked through the interface between consumer-driven health care and state managed care regulation.

6. The states have also not addressed the significant potential for misunderstanding and confusion faced by consumers and providers learning to negotiate HSA/HDHPs.

Conclusions

- The states have generally embraced the federal initiative to encourage consumer-driven health care.
- In so doing, they have largely lost focus on their traditional responsibility for insurance regulation.
- They have not carefully examined the potential problems presented by HSAs and HDHPs and designed an appropriate regulatory response.

Implications for Policy

- Public policy with respect to consumer-driven health care seems at this point to be driven primarily by the federal government.
- The states, traditionally responsible for regulating health insurance in our federal system, need to consider their responsibility now.

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For additional information

Timothy S. Jost, J.D.

Robert Willett Family Professor
Washington and Lee University
College of Law

Lewis Hall

Lexington, VA 22802

jostt@wlu.edu

(540) 458-8510

Mark A. Hall, J.D.

Turnage Professor of
Law and Public Health
Wake Forest University

Winston-Salem, NC 27157

mhall@wfubmc.edu

(336) 716-9807