

# Leveling the Playing Field: Private Insurance Oversight in the Exchanges

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## About Community Catalyst

Community Catalyst is a national non-profit advocacy organization that works with national, state and local consumer organizations, policymakers and foundations to build consumer and community leadership to improve the health care system.

We support consumer advocacy networks that impact state and federal health care policy, and ensure consumers have a seat at the table as health care decisions are made.

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## Presentation Overview

- Introduction
- Adverse Selection
- Rate Review
- Rating Rules
- Conclusion



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## Introduction



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## Framing the Issue

- Before the passage of the Affordable Care Act (ACA), private health plans were subject to both state and federal regulations.
- The ACA establishes a wide range of new reforms aimed at protecting consumers enrolled in these plans.
- The ACA also establishes Exchanges to facilitate access to affordable, quality plans for consumers.
- Today, we'll discuss some of the ways in which the new reforms will interact with the exchanges.



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## Adverse Selection



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## What is Adverse Selection?

- The division of healthier and less-healthy individuals into different insurance arrangements
- This occurs because lower risk individuals with lower insurance costs will often choose to purchase less insurance coverage while higher risk individuals with higher insurance costs will often choose to purchase more insurance coverage.



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## Adverse Selection in the Exchanges

- Could occur if healthier people with lower health care costs select plans outside the Exchanges and sicker people with higher health care costs select plans within the Exchanges
- Adverse selection would increase costs to consumers in the Exchanges and would increase costs to the federal government which will subsidize low- and moderate-income individuals in the Exchanges.



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## Adverse Selection in the Exchanges (Continued)

- High premiums for Exchange plans would further discourage healthier people with lower costs from purchasing plans from an Exchange.
- This would further increase premiums—creating what’s down as a “death spiral.”
- “The single most important reason why some Exchanges have not succeeded in the past is that they became the victims of adverse selection—they were unable to capture a large enough share of the healthy participants in the insurance market. . . .”



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## Adverse Selection in the Exchanges (Continued)

- Under the ACA, plans offered both inside and outside of the exchanges must meet essential health benefit and rating rules requirements.
- However, exchange plans must also meet requirements for adequate provider networks, reporting on quality care, grievance procedures, marketing practices, and benefit design.



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## Adverse Selection in the Exchanges (Continued)

- Given this, there are mixed consequences of creating a competitive process to offer plans in the Exchanges.
- This could lead to different plans inside the Exchanges compared to outside the Exchanges—and more chance of adverse selection.
- But, failure to develop a competitive process could reduce the quality of plans in the Exchanges.



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## Federal Risk Adjustment Provisions to Minimize Adverse Selection

- These provisions can minimize, but not entirely prevent, adverse selection by attracting healthier individuals and groups with lower costs to the Exchanges.
- Federal subsidies for low- and moderate-income individuals can only be used within the Exchanges—ensuring some amount of risk-adjustment within the Exchanges (except that low-income individuals tend to be sicker than high-income individuals).



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## Federal Risk Adjustment Provisions to Minimize Adverse Selection (Continued)

- Once Exchanges are established, small business health insurance tax credits can only be used in the Exchanges.
- Plans, both inside and outside the Exchanges, with healthier-than-average enrollees will subsidize plans with sicker-than-average enrollees.



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## States Can Also Minimize Adverse Selection

- States can—but are not required to—take steps to minimize adverse selection.
- Enforcement is critical.
- States that opt for a federal Exchange, instead of developing their own Exchange, will be giving up significant enforcement capacity.



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## States Are Given Some Regulatory Options by the ACA

- Certifying plans allowed to appropriate in the Exchanges
- Review premium rate increases above 10 percent, or above state-specific threshold
- Determine whether or not to actively purchase plans for Exchanges
- States can standardize the actuarial value of plans and limit the number of plan choices to increase competition among plans.



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## States Can Elect to Have Additional Regulatory Options

- States can deter insurers from only having plans outside of the Exchanges.
- States can mandate that the same rules govern plans inside and outside the Exchanges.
- Insurers can be required to offer the same plans in the Exchanges that they offer outside of the Exchanges.
- For insurers that offer the same plans inside and outside the Exchanges, the ACA requires the plans to charge the same premiums for plans inside and outside the Exchanges.



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## States Can Elect to Have Additional Regulatory Options (Continued)

- States can merge their individual and small group markets.
- By 2015, states must financially support their Exchanges. If they choose to assess fees on insurers, they can levy fees on all insurers, not just those in Exchanges.
- States should not create incentives for brokers to place people in plans outside the Exchanges.
- Make Exchanges attractive to, and actively market to, small employers to diversify the risk pool within the Exchanges



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## Rate Review



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## What is Rate Review?

- Starting September 1, 2011, insurers requesting rate increases of 10 percent or more for non-grandfathered plans in the individual and small group markets must publicly disclose and justify the proposed increases.
- These increases will be reviewed by either state or federal experts to determine whether they are unreasonable.
- Starting September 1, 2012, the 10 percent threshold will be replaced with a threshold unique to each state that reflects the state environment (insurance and health care cost trends).



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## What is Rate Review? (Continued)

- States deemed to have effective rate review systems will conduct the reviews. However, for states without the resources/authority to conduct actuarial reviews, the federal government will conduct them.
- It is expected that most states will be deemed to have effective rate review systems.
- The federal government will continue to make resources available to states to strengthen their rate review processes.



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## Necessity of Rate Review

- Need to ensure that plans inside the exchange are affordable
- Enforcement is critical.
- Insurance commissioners should develop effective rate review processes if these do not already exist.



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## Rate Review in the Exchanges

- How does rate review interact with the Exchanges?
- The ACA actually requires that the Exchanges make insurers justify any requested premium increases before allowing these to take effect.
- Additionally, the ACA requires the Exchanges to take into account both the above justifications as well as those given by insurers for other excessive or unjustified premium increases as part of the rate review process to help determine whether a plan should be allowed to be offered.



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## Rating Rules



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## What Are Rating Rules?

- The criteria by which insurers set individual or group premiums
- Previously, there was a wide variance in the rules that insurers could use to set rates.
- The spectrum: community rating versus experience rating



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## Rating Rules in the Exchanges

- The ACA prohibits insurers from using health status, gender, or occupation to set rates.
- Instead, insurers may only use four criteria to set rates: age (3:1 ratio), tobacco use (1.5:1 ratio), family size, and geography.
- These rules are not unique to the exchanges but it's essential that they be equally enforced inside and outside the exchanges.
- Enforcement is critical.



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## Conclusion



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## Key Takeaways

- Adverse selection is the issue—related to private insurance oversight—that you should be most concerned about in connection with the exchanges.
- Rate review and rating rules also will be important and can make a real difference for consumers in the exchanges.
- Enforcement is critical.



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## Questions?



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