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Shriver Center on Poverty Law

How Illinois Can Make Health Insurance More Affordable

Introduction

Increases in health care costs are negatively impacting individuals and small businesses in Illinois by making health insurance less affordable. The high cost of health care leads to higher health insurance premiums and out-of-pocket costs for individuals and small businesses. In a 2021 survey of Illinois adults, conducted by Altarum, nearly 58% of those surveyed reported experiencing health care affordability burdens in the past year, and 80% reported being worried about being unable to afford health care in the future.[1] There are steps Illinois can take now to improve the affordability of health care and reduce the burden and worries of consumers and small businesses. As a first step, Illinois should conduct a rigorous review and oversight of health insurance rates to combat unaffordable prices.

In this paper, supported by Arnold Ventures, and developed by Families USA and the Shriver Center on Poverty Law, we outline four best practices that are working in states across the country and, if adopted, will result in increased numbers of Illinoisians being insured and lower health care costs overall. These recommendations fall into two categories: increased statutory authority for Illinois insurance regulators to consider affordability when setting rates and increased opportunities for consumers to engage in the rate review process. The result of implementing these best practices will be a more accurate and equitable pricing structure that will make insurance more affordable for consumers and small businesses.

December 2022

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Four Recommendations to Improve Affordability of Private Health Insurance for Individuals and Small Businesses

Based on research by Families USA and the Shriver Center as well as qualitative interviews with officials and advocates from other states with effective affordability protections for individuals, families and businesses, we believe that the following recommendations for state legislators and regulators will improve the affordability of private health insurance sold to individuals and small businesses in Illinois:

1. **Authorize** the Illinois Department of Insurance in law to approve, modify or reject all proposed health insurance rate increases.
2. **Explicitly require** in statute the Illinois Department of Insurance to use its authority to examine the affordability of proposed rates and of underlying prices.
3. **Increase** public representation in the rate review process by mandating the creation of an Office of Health Care Affordability to represent consumers and small businesses to advocate for transparency of rate filings and provide actuarial support to consumers.
4. **Realign** the pricing of silver health plans in the marketplace with their actuarial value, which is a more accurate approach than insurers currently use in Illinois, and which effectively would increase the premium tax credits available to consumers.

Illinois should take these four steps, described in further detail on the following pages, to improve the affordability of health insurance for individuals, families and businesses.

1. Authorize the Department of Insurance to approve, modify or reject all proposed health insurance rate increases

When businesses need to reduce their health benefits due to rising insurance costs, employees and their dependents are often left uninsured or underinsured and less able to afford health care. Similarly, increases in individual market premiums harm families that purchase coverage on their own, and these increases will be felt even more acutely if enhanced premium tax credits, provided through the Affordable Care Act and made more generous through the Inflation Reduction Act, do not become permanent. Federal law and regulations require review of proposed annual rate increases exceeding 15% in the small-group and individual markets (that is, for premiums charged to small businesses and to people who buy their own coverage),[2] but many states require review of all rate increases and have significantly reduced premium increases that were below the 15% threshold. In such review processes, state officials examine documents submitted by insurers that provide information about a health plan's past expenses as well as the insurer's projections about medical cost increases, utilization, administrative expenses, profits and needed reserves. State officials reject or modify rate increases that the state determines are excessive or unfounded.

In contrast, Illinois does not have a prior approval process for rate increases. Instead, the state relies on informal negotiation with carriers in the individual and small-group markets to voluntarily encourage rate changes. In Illinois, there is no compliance mechanism to compel carriers to reduce their rates if they are not willing to do so. Some states also review, and have significantly reduced, increases in health insurance rates charged to large businesses. Connecticut, New Mexico, New York, Rhode Island and Vermont are among the states that review at least some large-group rates as well as all proposed individual and small-group market rates.[3]

- Rhode Island is an example of a state where rate review made a notable difference to 2023 premium rates, even though insurers' initial proposed increases were lower than 15%. Rhode Island law requires health insurers to file all proposed rates (including for large-employer groups) simultaneously with the Office of the Health Insurance Commissioner and with the attorney general's health advocacy unit. Insurers must establish that rates "are consistent with the proper conduct of its business and the public interest."[4] Law and regulations further provide that reviews address accessibility, quality and affordability.[5]

In Illinois, there is no compliance mechanism to compel carriers to reduce their rates if they are not willing to do so.

For 2023 rates, across the market, Rhode Island was successful in substantially lowering premium rates from those insurers initially proposed. Requested increases on the individual market, on average, were 8% — below the federally required review level — yet rate review in **Rhode Island** lowered those increases by 2 percentage points on average and made striking differences in the premiums charged by some carriers. For example:

- In the small-group market, the second largest insurer's rates were lowered from a requested increase of 10.7% to an approved increase of 3.5%.
- Likewise, in the individual market, one insurer's approved rates were lowered by from a requested increase of 9.6% to an approved increase of 3.1%.
- In the large-group market, approved rates for an insurer with over 12,000 enrollees was lowered from an average increase of 11.7% to 8.0%.
- Overall, the Office of the Health Insurance Commissioner reported that Rhode Islanders will save $22.9 million in 2023 with the approved rate increases compared with the rates that the commercial health insurers requested.[6]

Examples of other places where rate review made a notable difference to 2023 premium rates include:

- **Connecticut:** The average rate increase insurers requested in the small-group market was 14.8% for 2023. Rate review halved that to an average increase of 7.9%.[7]
- **New York:** Approved small-group rate increases were reduced by 52% from insurers' requested increases, saving small businesses $632.4 million.[8]
- **District of Columbia:** The Department of Insurance, Securities and Banking noted, "As a result of the Department's review, and input provided at the hearing, two out of four insurers reduced their rates from their initial filings. The decreases from the initial filed rates … will save District residents more than $17 million."[9]

Over the years, rate review has made a notable difference in many other states as well.[10]

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Rate Review Makes a Difference In Premium Rates

New York small businesses will save $632.4 million.

In the District of Columbia, individuals and small businesses buy their coverage through a district-based exchange. The exchange executive director testifies at rate review hearings and has "helped save millions in premium dollars each year." In addition to examining actuarial assumptions, the district's exchange conducts a policy analysis to determine if rate increases are "appropriate given economic conditions."

2. Require the Department of Insurance to examine the affordability of proposed health care price increases

Giving statutory authority for rate review to Illinois regulators is an important first step, but Illinoisians will benefit even more if that authority is coupled with a requirement that the Department of Insurance expressly assess the impact a rate increase will have on consumers' ability to afford insurance.

Within the process of rate review, states like Rhode Island give authority to departments of insurance to examine critical underlying metrics, such as affordability. According to Rhode Island's statute that determines the process for rate review, proposed rates are required to be "consistent with the proper conduct of … business and with the interest of the public." Considering members of the public have an interest in the affordability of their health care, the rate review process should take affordability into consideration.[11] Rhode Island regulations state that all market rate filings may require "[e]vidence of compliance with the affordability standards adopted by the Commissioner, in a manner prescribed by the Commissioner" and that the commissioner can attach conditions to the rate such as "[a]ffordability standards adopted by the Commissioner, including hospital contracting conditions adopted by the Commissioner."[12]

Similarly, Vermont law explicitly requires that, before a health insurance rate is approved, its Green Mountain Care Board "shall determine whether a rate … promotes access to health care." Under this authority, underlying prescription drug costs, pharmacy benefit management costs and provider payments may all be examined.[13]

Besides examining projected medical cost trends, Vermont, like some other states, examines "whether a rate is affordable" to consumers overall.[14] In a given year, for example, a state might decide that an insurer should retain less funds for administration, profits or contribution to reserves due to the economic conditions confronting consumers.

For example, in the District of Columbia, individuals and small businesses buy their coverage through a district-based exchange. The exchange executive director testifies at rate review hearings and has "helped save millions in premium dollars each year."[15] In addition to examining actuarial assumptions, the district's exchange conducts a policy analysis to determine if rate increases are "appropriate given economic conditions."[16] For example, in recent years, the executive director has urged that consumers' and small businesses' experiences of inflation and of hardship during the COVID-19 pandemic and recovery period be taken into account in determining final rates. A public town hall-style hearing in which regulators hear directly from affected people has been important in highlighting such conditions.[17]

Rising prices for health care services are among the reasons for health insurance rate increases, and so some states have pursued state-level policies to monitor and curb the harmful effects of excessive health care prices. Colorado, Connecticut, Delaware, Massachusetts, New Jersey, Oregon, Rhode Island and Washington have all adopted various policies to implement cost growth benchmarks in their health care markets.[18] These cost growth benchmarks can also play a role in rate review. Vermont's Green Mountain Care Board reviews hospital budgets as well as health insurance rates.[19] Rhode Island has incorporated hospital and primary care spending benchmarks into its review of health insurance rates.[20]

In 2020, national total expenditure on health care increased by 9.7% to $4.1 trillion, and this number is projected to increase to $6.2 trillion by 2028.[21] These increases in health system costs are primarily driven by growth in unit prices rather than increased volumes of health care services. The aggressive growth of health care prices has affected consumers in many ways, most notably, through their insurance premiums.[22] Workers are struggling to be able to afford health care, even with insurance. One recent survey found that 54% of fully insured employees reported delaying or canceling medical services due to cost.[23]

Illinois has not taken many steps to improve health care affordability for its residents.[24] Therefore, the residents of Illinois are feeling increased financial pressure. Insurers in Illinois have cited high medical cost trends as a reason for premium increases within the state.[25] The high cost of health care may be particularly acute for Illinois residents, impacting both their out-of-pocket costs and their premiums, demonstrating a clear need for a focus on affordability in processes like rate review (see call out box on the next page).

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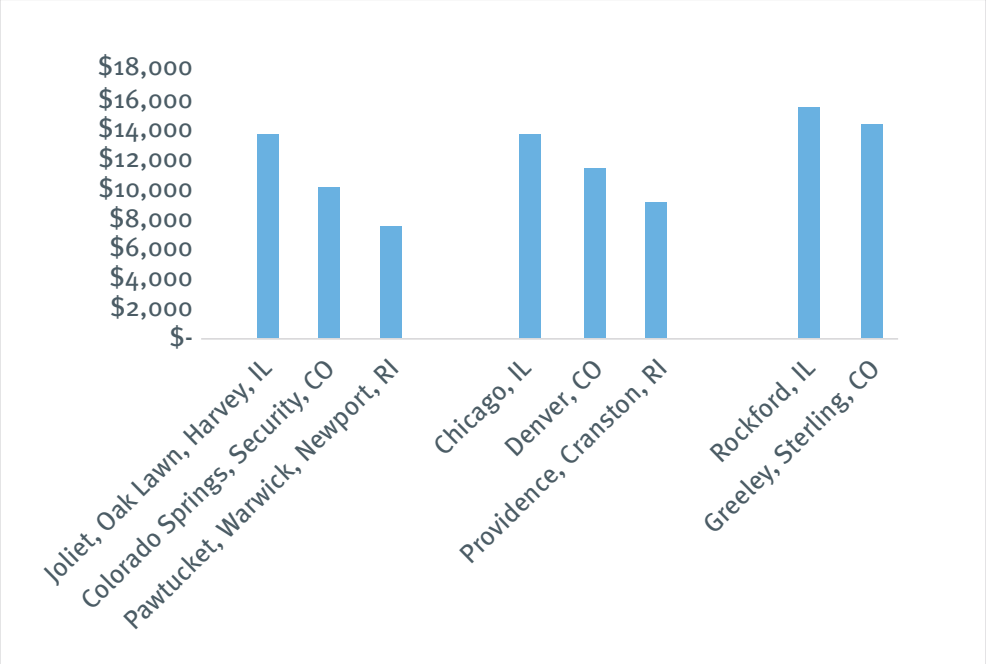
Prices for Some Common Medical Procedures Are High In Illinois

Fair Health data shows that in-network contracted rates for common medical procedures for patients with private insurance are higher in Illinois than in states like Rhode Island and Colorado which have taken steps to strengthen state oversight of health care prices, suggesting room for adjustment. When comparing different urban areas matched by cost of living in Rhode Island, Colorado, and Illinois, data reveals that the in-network contracted rates in Illinois are higher than their counterparts in other states.

In our analysis, we reviewed three CPT codes to represent a basket of services for comparison. The codes include 27447 (total knee arthroplasty), 72148 (MRI spinal canal lumbar without contrast), and 99233 (subsequent hospital care – 35 minutes). When the contracted rates for these CPT codes are combined, the calculations show that Illinois contracted rates are on average, anywhere from about $1280 to $3450 more for the same sample group of procedures than Colorado contracted rates in areas with similar costs of living. Illinois contracted rates are also on average anywhere from about $4520 to $5890 more for this sample group of procedures than Rhode Island prices in areas with similar costs of living.

Mean Cost of a Basket of Services in an Outpatient Facility Among Areas with Comparable Costs of Living



Notes: This graph depicts the combined differences in average contracted rates for a basket of services: total knee arthroplasty, MRI spinal lumbar, and 35 minutes of subsequent hospital care in an outpatient facility. The graphs compare provider and facility rates across three different states: Illinois, Colorado, and Rhode Island. In-network contracted rates are compared across geopzip areas with similar costs of living in each state.

Research for this text box is based upon healthcare claims data compiled and maintained by FAIR Health, Inc. Families USA and Shriver Center for Poverty Law are solely responsible for the research and conclusions reflected in this paper. FAIR Health, Inc. is not responsible for the conduct of the research or for any of the opinions expressed in this article.

State Innovations That May Lower Insurance Rates

Several states are embarking on new projects to lower insurance rates that may provide models for Illinois in the future, especially if Illinois establishes a state-based health insurance marketplace.

- **Colorado** set premium reduction requirements and provider cost growth targets for standardized Colorado Option plans that will be offered in its individual and small-group marketplaces. If these plans do not file rates that meet targets, a newly established health insurance ombudsman, advocates, affected individuals and all relevant parties can present evidence through a public hearing process.[26] Though many insurers' preliminary filings for 2023 did not meet premium reduction targets, following the rate review process, a large majority of plans did meet the reduction targets.[27] Colorado is still in the early implementation process of its major reform. Savings from this innovation will be used to cover more people who are currently uninsured.
- **Maine** recently merged its individual and small-group markets in order to improve stability in both market segments. Maine previously provided reinsurance in the individual market through a Section 1332 waiver, and it has now extended that reinsurance to the newly merged individual and small group market. Maine will make plans with standardized cost sharing available to both small groups and individuals. As a result of these actions, Maine reports that, for 2023, its small-group market premiums decreased — a sharp contrast to what occurred in many other states.[28]
- **New Mexico** gave insurers detailed instructions for proposing their 2023 rates in the individual and small-group markets. For example, New Mexico required insurers to submit rates based on provider contracts then in effect, include a five-year history of medical cost trend in addition to their COVID-19 and contracting assumptions, and disclose several specific adjustments (such as for insulin caps and for required elimination of cost sharing for behavioral health).[29] Such groundwork could lead to further proscription of rating factors in the future.
- **Oregon** is designing a "bridge plan," similar to its Medicaid program that delivers care through Medicaid coordinated care organizations, to make insurance more affordable and available to people with incomes under 200% of the federal poverty level.[30] In both Medicaid and its private insurance market, Oregon has begun to examine whether proposed rates meet a cost growth target. It also requires private insurers to itemize administrative costs and the Division of Financial Regulation notes that review of these costs has saved consumers money.[31]

3. Increase public representation in the rate review process

The most powerful public testimony comes straight from the people most affected by a decision. However, it can be difficult to get consumer participation in a process as technical as insurance rate setting — despite its outsized impact on families' pocketbooks. Based on our interviews with state insurance departments and advocates in states around the country, Illinois could significantly increase public representation in the rate review process by creating a new state Office of Health Care Affordability and by utilizing the following approaches.

CHECKLIST:
Increase Public Representation in Health Insurance Rate Setting

- ☐ **Post** materials about proposed rates for public view.
  - › Use a consumer-friendly website.
  - › Publish the details of insurers' justifications for raising rates — not a heavily redacted statement aimed at shielding proprietary information from public view. Enable consumer representatives to view insurers' assumptions about health care prices, utilization, administrative expenses, contributions to reserves and surplus.
  - › Notify people about how they can comment, especially when their own insurer is raising rates.
- ☐ **Hold** a town hall-style public hearing to review proposed rate increases in addition to more technical or judicial-style hearings. Provide enough advance notice to the public regarding the date of the hearing, and ensure accessibility options and alternative formats are available (for example, virtual participation and language access).
- ☐ **Fund** consumer assistance programs that can both inform people of how they may provide input themselves and review the complex filings on behalf of consumers.[32] Ensure a consumer assistance program and/or an attorney general who represents the public interest is a party to all types of rate hearings.
- ☐ **Ensure** that actuaries are available to explain and question insurers' mathematical assumptions at any hearings convened to review proposed rate increases. For example, a state-funded consumer assistance program, or an attorney general or state-based exchange involved in rate review, should have appropriate access to an independent actuary.

Increase transparency of insurers' filings

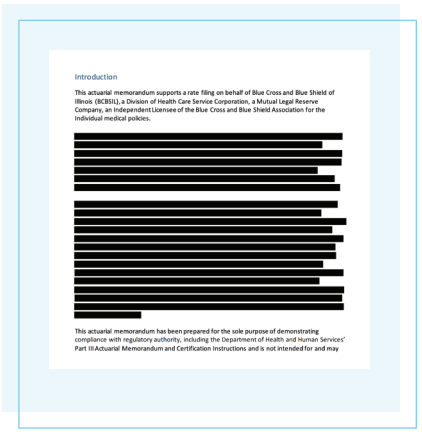
In some states, advocacy organizations as well as state officials have delved into rate filings to comment on the impact proposed rates would have on people, and to compare insurers' assumptions about medical costs and utilization, the impact of COVID-19, how rates should differ by geographic area, and administrative costs.[33] They have commented on insurers' histories of overpricing products and then returning money to consumers after the year's end due to a federal law that requires insurers to issue rebates if they have made too much in profits — known as medical loss ratio, or MLR — and they have commented on insurers accumulated surpluses.[34] This type of review is only possible, however, if the portions of rate filings that provide information on such issues are made public. Advocates point out that MLR, medical trend, administrative costs, prescription drug trend, utilization trend and projected contributions to surplus are among the crucial information that should not be redacted.[35]

In many states, advocates can easily obtain the full filings of each carrier, but in Illinois, large portions of the filings are blacked out (see figure 1) — redacted from public view. (See this redacted actuarial justification for Blue Cross and Blue Shield of Illinois' increase, for example, and this very abbreviated justification that is available to the public.) While Illinois complies with federal law by publishing this abbreviated information on HealthCare.gov, redacting key information about the rate filings makes it difficult, if not impossible, for consumers and advocates in Illinois to fully participate in a process that has a dramatic impact on their family's financial well-being.

Among states that have maintained transparent, consumer-friendly websites, these stood out:

- The Rhode Island Office of the Health Insurance Commissioner posts detailed information comparing insurers' requested rate increases and their key assumptions about how medical and nonmedical expenses will change. (See https://ohic.ri.gov/regulatory-review/rate-review.)
- The Connecticut Insurance Department posts entire rate filings as well as a concise summary of each as well as testimony from public officials and a broadcast of the public meeting. (See https://www.catalog.state.ct.us/cid/portalApps/RateFilingDefault.aspx.) Consumers may post comments on any filing, and the comments are then made a part of the filing's public record. Consumers can also sign up for e-alerts to be notified when rate filings are posted.[36]

Figure 1. Example of a Redacted Actuarial Justification


Introduction

This actuarial memorandum supports a rate filing on behalf of Blue Cross and Blue Shield of Illinois (BCBSIL), a Division of Health Care Service Corporation, a Mutual Legal Reserve Company, an Independent Licensee of the Blue Cross and Blue Shield Association for the individual medical policies.

[redacted]

This actuarial memorandum has been prepared for the sole purpose of demonstrating compliance with regulatory authority, including the Department of Health and Human Services' Part III Actuarial Memorandum and Certification Instructions and is not intended for and may

In Illinois, large portions of carrier filings are blacked out from public view, as in this Blue Cross and Blue Shield sample.

» The Oregon Division of Financial Regulation makes all rate filings and correspondence public on its website after initial review. (See https://dfr.oregon.gov/healthrates/Pages/pending-filings.aspx?rdo_metastatus=Pending.) Webpages explain how to get involved in the rate review process and include videos of rate hearings. The Division of Financial Regulation holds a public conference call to discuss the filings.[37]

Invite public comment

Public comment and testimony provide an important grounding for regulators on the impact of proposed rate increases. Increased transparency can allow consumers to have a say in the cost of their health insurance. Among states, public hearings on rate review range from informal town halls in which the public can testify to formal, judicial-style hearings. Some states employ a combination of methods, using informal meetings to gather public input, which is then considered in a formal proceeding. States have successfully invited public comment through press releases and websites, and by requiring insurers to notify their customers of proposed increases.

» In **Rhode Island**, when rates are filed, the Office of the Health Insurance Commissioner issues a press release that invites public comment and includes the date of the hearing. Insurers are required to send notice to customers if their rate filings are being reviewed in the hearing because of a proposed increase. To publicize the rate review process, the state's insurance commissioner has also spoken to news outlets.[38] Rhode Island gathers consumer input on whether rates are in the public interest through informal public meetings and written comments. Proposed rate increases of 10% or more trigger a formal public hearing, involving the attorney general, the health insurance commissioner, the insurer and actuaries, to determine if rates are actuarially sound and if they promote the public interest (including whether they are affordable).[39]

» In **Colorado**, hearings were made a requirement for Colorado Option plans under legislation passed in 2021.[40] Colorado Option plans offer standardized benefits and cost sharing in Colorado's individual and small-group markets. Colorado law specifies that premium rates for these plans must be lower than the rates offered by carriers in 2021, adjusted for medical inflation. If health insurers do not meet required premium reductions under the legislation, the public hearing process is triggered for 2024 plans. Advocates note that navigating filings is complicated, and they are advocating for key filing information to be provided through a consistent template. Further, advocates would like consumers to receive notice from their insurer about the public hearing process if their insurer is not proposing rates that will meet premium reduction targets. A public hearing process can highlight what the supposed justifications are from insurers, providers and hospitals for why costs are not being kept down.[41]

» In **Connecticut**, news media informed the public about an upcoming meeting regarding proposed health insurance rates for 2023. The attorney general and the Office of the Healthcare Advocate had pushed to get a formal public hearing on proposed rates. Although that request

was denied, a compromise was reached to offer an expanded informational hearing that included their participation and allowed more time for comments from legislators and from the public. The improved, more accessible hearing raised greater awareness of the issues and generated even more media attention that ultimately may have helped to lower rates.[42]

- In **Vermont**, the Office of the Health Care Advocate observed that the complexity of public comment submission forms affects the quality of comments. On behalf of itself and other advocacy groups, the Office of the Health Care Advocate has deployed its own easy-to-use public comment Google form. Advocates Michael Fisher and Eric Schultheis noted that public comments on rate review increased dramatically through use of that form compared with those submitted in previous rate-setting processes. Hundreds of comments from patients and employers were summarized in the Office of the Health Care Advocate's January 2020 report, Vermonter's Voices: Health Care Doesn't Work If You Can't Afford to Use It. "Our role is to put political pressure on the regulator and give them room to cut rates by bringing publicity and voices to the argument [that rates need to be more affordable]," Michael Fisher said.[43]
- Some states have required that insurers notify enrollees of proposed increases in their plan so that they may comment. However, this public comment opportunity is only meaningful if the regulatory agency has authority to reject a proposed rate increase and if agencies or community-based organizations help consumers understand insurers' proposals and how they can weigh in. **Maine** and **New York** are examples of states that require individual notice.[44]

Fund consumer assistance programs that help people with health insurance problems

State-funded consumer assistance programs and attorneys general can play a strong role in representing consumers in rate review. Examples of these roles include:

- In **Vermont**, the Office of the Health Care Advocate is explicitly funded both to represent individuals with health insurance problems and to represent the public on matters including rate review. The Office of the Health Care Advocate was created by the Vermont Legislature to advocate for Vermonters with health care questions and concerns. It is a project of Vermont Legal Aid, a statewide nonprofit law firm. The office receives a single grant from the state, as guaranteed legislatively, both for its individual assistance to consumers and for its public representation on matters including rate review, hospital budgets, certificates of need and accountable care organization budgets. Its regulatory advocacy is largely funded through the state with funds derived from insurers. As a party to the rate review process, Vermont Legal Aid is able to question insurers' actuarial assumptions, view confidential material and push back against redactions in publicly available filings that are too extreme. In its testimony, it focuses on whether filings meet the state's requirements to promote affordability and access. Vermont's Office of the Health Care Advocate draws from a number of data sources to question the affordability of rates as well as to question various insurer assumptions.[45]
- In **New York**, the Department of Financial Services formally invites public comment about proposed premium rate increases within 30 days of the filing's posting. Its interactions with

consumer advocates, however, are crucial to a meaningful public comment process. Insurers must send customers a notice about a proposed increase when they file proposed rates with the department. Insurers send a more specific notice if the final premium rate is approved.[46] Health Care for All New York, a coalition of 170 consumer health advocacy groups, files written comments on the assumptions in the insurers' rate filings and points out the impact of increases on consumers. It provides: 1) general observations about the state enrollment trends, medical loss ratio trends, etc.; and 2) carrier-specific comments on details in insurers' rate filings. Community Service Society of New York is a founding member of Health Care for All New York and serves as its coordinating hub. Further, the Community Service Society's Community Health Advocates program is the hub of the official Consumer Assistance Program for New York state and provides individual assistance, outreach and education on health coverage matters.[47]

- Similarly, in **Maine**, Consumers for Affordable Health Care highlights inconsistencies and weak justifications for portions of the rate filings in its comments.[48] Consumers for Affordable Health Care is a nonprofit organization that helps people find health care and assert their rights, as well as provides education, research and policy analysis. Over the years, it has sometimes received federal funding and continues to receive state funding for its consumer assistance. In a detailed analysis of proposed rates for 2023, Consumers for Affordable Health Care pointed to past years when carriers overpriced products and later paid rebates because they did not meet medical loss ratios, noted differences between insurers' cost and utilization assumptions, and noted differences among carriers as to how they priced silver health plans — plans that pay about 70% of enrollees' costs (and more for residents who qualify for federal cost-sharing reductions)* — relative to other "metal" levels. However, in Maine not all insurers are subject to a rigorous review process,[49] limiting the amount that advocates and regulators can constrain rate increases. Further, some insurers provide little detail about the reasons for their cost assumptions.[50]
- In **Connecticut**, the Office of the Healthcare Advocate (together with the attorney general and several legislators) stepped in to object to double-digit rate increases proposed for 2023. The Office of the Healthcare Advocate is a state office that was established to assist consumers with health care issues, including health plan selection and consumer rights.[51] In anticipation of the informational meeting on 2023 health insurance rate requests, the Office of the Healthcare Advocate submitted written questions to be answered before the meeting and was also given time to direct questions of the insurers during the hearing. The attorney general and the Office of Health Strategy also had the opportunity to ask direct questions during the hearing. "The public pressure at the hearing likely contributed to the Insurance Department decision to approve lower rates than those initially requested, but rates are still too high," said Jill Zorn, senior policy officer at the Universal Health Care Foundation of Connecticut. "The more public the process, the more weight you can get behind the advocacy to lower rates," she added.[52]

* Insurance carriers pay a larger share of costs for enrollees with incomes up to 250% of the federal poverty level who receive cost-sharing reductions under the Affordable Care Act.

The Connecticut Office of the State Comptroller, in conjunction with the governor's Office of Health Strategy, has developed the Connecticut Healthcare Affordability Index, a living tool that measures the impact of health care costs, including premiums and out-of-pocket expenses, on a household's ability to afford basic needs like food and housing. Though health care cost benchmarks are not yet an official part of Connecticut rate review, the Healthcare Affordability Index will allow policymakers to estimate the effect of health care proposals on the capacity of Connecticut families to maintain quality coverage.[53]

- In **Colorado**, a consumer ombudsman position was built into Colorado Option legislation, which is being implemented for 2023. One of the ombudsman's duties is to represent consumers during the rate filing and public comment and hearing process.[54]

Illinois should create an Office of Health Care Affordability that would similarly represent consumers and small businesses in rate review.

Provide actuarial support

State advocates and public officials have expressed the usefulness of hiring actuaries, and economists with insurance expertise, who can dive in depth into filings.

- The **District of Columbia**'s Health Benefit Exchange Authority, which officially testifies on behalf of marketplace consumers, and the district's Department of Insurance, Securities and Banking each use actuaries. Their alternate opinions to those offered by insurers are helpful in getting to a better rate for consumers.[55]
- Also in the **District of Columbia**, with the help of an actuary and a nationally known health economist, DC Appleseed Center for Law and Justice has successfully challenged the surplus held by a nonprofit insurer. Under its charter, the nonprofit insurer is required to use its assets to serve the public. In a multiyear process involving hearings before the insurance commission and in court, an investigation of the company's building assets resulted in establishment of a $95 million community fund from the insurer's excess surplus. District of Columbia law now requires the insurance commissioner to review the company's surplus no less than once every three years.[56]
- In **Vermont**, the Green Mountain Care Board and the Office of the Health Care Advocate (Vermont Legal Aid), as well as insurers and regulators, use actuaries during rate review. The Office of the Health Care Advocate has found actuaries helpful as technical experts to help identify errors in filings and questions that Office of the Health Care Advocate then raises in rate proceedings.[57]
- In **Rhode Island**, the attorney general and the Office of the Health Insurance Commissioner each use actuaries to analyze insurers' projected medical trends, administrative charges and profit margins. The Office of the Health Insurance Commissioner publicly posts these actuarial memos, which may require an insurer to modify its rate requests.[58] But as noted earlier, actuarial soundness is only one component of Rhode Island's rate review process. Affordability and access are also essential standards.

4. Realign the pricing of silver health plan premiums for individual insurers on the marketplace

In addition to strengthening its rate review process, Illinois should set specific rules for how carriers price metal-level premiums (that is, bronze, silver, gold and platinum plans) in the individual market. Metal levels denote the generosity of health plans, with platinum requiring the least cost sharing. The pricing of silver plans is especially important because the federal government calculates premium tax credits based on the price of the second-lowest cost silver plan in a state's individual marketplace. Further, people with incomes up to 250% of the federal poverty level may qualify for cost-sharing reductions in silver plans that raise their value. Premiums are "misaligned" if they do not reflect the higher aggregate value of silver plans.

Illinois passed legislation in 2022 requiring a study of premium misalignment, which is underway as of November 2022.[59] Realigning these premiums with coverage generosity, in accordance with single risk pool rating requirements, can help marketplace enrollees afford to buy a richer benefit package. For example, when New Mexico realigned premiums in 2022, enrollment in gold plans increased by 32%. Several states have realigned premium prices with good results, supported by actuarial analysis.

In realigning premium prices, Illinois should require carriers to adhere to two principles:

1. **Carriers should take into account the likely higher use of services, or "induced demand," in plans with higher actuarial values.** Silver plans for enrollees without cost-sharing reductions are designed to pay about 70% of a typical population's health care costs, a 70% "actuarial value." But people with cost-sharing reductions are eligible for silver-level plans that cover more costs and that have actuarial values of 73%, 87% or 94%. Plans should set overall prices for silver plans that account for the likely higher use of services in plan variants with higher values. To assure equity among marketplace carriers, silver plan premiums would reflect the statewide distribution of silver enrollees who receive cost-sharing reductions. Silver plans are generally more profitable than other metal levels, and so a statewide distribution requires insurers to compete on overall premium prices rather than their prices by metal level.
2. **Carriers must still price enrollees as part of a single risk pool.** Insurers can vary premiums among individual market plans based on differences between the generosity of the plans, but not based on anticipated differences among the demographic characteristics of consumers who are expected to enroll in each plan. Consistent with federal rules,[60] carriers should base premiums for a particular plan on "the average demographic characteristics of the single risk pool" consisting of all the insurer's individual market enrollees in the state.

Following these principles also has the effect of increasing silver-level premiums. Since premium tax credits are calculated based on the cost of a benchmark silver plan, it will in turn increase federal premium tax credits dollars available to Illinois marketplace enrollees. This will benefit most Illinois enrollees in the individual market. With their premium tax credit dollars, they will be able to either buy more valuable gold plans, or they will be able to pay less for other plans.

This method, supported by actuarial analyses and in keeping with federal regulations, has been adopted by New Mexico and Pennsylvania with good results, and has been partially adopted by Colorado and Virginia.[61]

Similarly, new Texas regulations that implement its 2021 rate review law require realignment of metal-level premiums effective in plan year 2023. As a result, over 70% of 2022 marketplace enrollees in Texas have access to free gold coverage in 2023.[62]

An Illinois-specific analysis of 2022 marketplace plan offerings, conducted by Axene Health Partners, shows that repricing would have a tremendous impact on the pocketbooks of Illinoisians who purchase their health coverage through the exchange, increasing their access to total premium tax credit subsidies by approximately $102.9 million.[63] Additionally, repricing would have the following impact on metal-level plan prices:

- Premium prices for bronze plans would be reduced by an average of 4.7%.
- Premium prices for gold plans would be reduced by an average of 12%.
- Silver plan premiums would increase by an average of 7.6%. That would have no effect on people who buy the benchmark silver plan with their premium tax credits. Further, gold marketplace plans would be about 91% of the cost of silver plans, so people could use their premium tax credits to buy more valuable gold plans.

Other states pursuing this approach have seen dramatic increases in high-value gold-tier enrollment. Their residents are able to afford plans with lower deductibles and copayments once premiums are realigned.

With lower available premiums and higher federal subsidies, marketplace enrollees could decide to either buy a richer benefit package or buy a plan for a lower price and save premium dollars.

New Mexico realigned premium prices on its individual marketplace, effective in 2022. The state's insurance department reported that realignment has been very helpful, enabling people who do not receive federal cost-sharing reductions to move to gold plans that cover a greater share of their health care costs. Additionally, New Mexico is using state resources to further increase the cost-sharing subsidies available to individuals and families with modest incomes.[64]

About Our State Interviews

When selecting states to target for interviews, we based our decisions on previous literature about rate review processes, documentation that rates decreased during the rate review process, and on our knowledge of recent advocacy to make private coverage more affordable for individuals and families. We conducted interviews with state insurance department officials and/or health care advocates involved in rate review in the following states: Colorado, Connecticut, Illinois, Maine, New Mexico, New York, Oregon, Rhode Island and Vermont. We also interviewed the executive director of the District of Columbia's district-based exchange and district advocates involved in review of a nonprofit insurer's surplus.

During interviews, we asked state insurance commissioners and health care advocates about the processes they use to review proposed insurance rates, public involvement and consumer representation in rate review, and how underlying medical cost trends are examined. We also asked them to share best practices that they believe could be used to great effect in other states.

Additionally, we looked at state rate review laws, public information on insurance department websites regarding the rate review process, proposed rates for 2023, and final rate decisions. We noted that Colorado and Rhode Island are two states that incorporate provider pricing targets into rate review. Several other states have newer health care cost growth targets.[65]

We worked with actuarial firm Axene Health Partners to determine how realigning the price of silver health plans on the individual marketplace would affect rates.

Conclusion

Illinois could lower health insurance prices for residents by taking a number of steps at the legislative and administrative levels — steps that have proven effective in states around the country. First and foremost, Illinois law should require in statute approval of all proposed insurance premium rate increases, not just those that exceed 15%. Affordability and underlying prices should be among the criteria for approving rates. Illinois should also increase public representation and amplify consumer voice in the rate review process by taking the following steps: creating an Office of Health Care Affordability to represent consumers and small businesses in the rate filing process, increasing transparency of rate filings and information, inviting public comment, funding consumer assistance programs and providing actuarial support. In addition, Illinois should set specific factors for insurers to use in pricing premiums for silver health plans on the exchange in relation to bronze and gold plans.

Finally, Illinois should watch innovations now occurring in other states to constrain health care prices and insurance premiums, and consider similar mechanisms in the future.

Endnotes

[1] "Illinois Residents Struggle to Afford High Healthcare Costs: Worry About Affording Future Care; Support Government Action across Party Lines," Altarum Healthcare Value Hub, May 2022, https://www.healthcarevaluehub.org/advocate-resources/publications/illinois-residents-struggle-afford-high-healthcare-costs-worry-about-affording-future-care-support-government-action-across-part

[2] 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 for proposed rate increases that exceed a 15% threshold, reviewers determine if rates are excessive in relation to the benefits provided, unjustified or unfairly discriminatory. A state that is conducting rate review must at a minimum examine the assumptions the health insurer used to develop proposed rates, past projections and actual experience, 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. Further, certain information about the justification for proposed increases must be public and open for public comment (45 CFR 154.205).

[3] Information from our interviews and state websites. Only state-regulated products can be reviewed (not, for example, self-funded large-group plans or those headquartered in other states), and some states restrict their review of large-group plans to HMOs.

[4] RI General Laws, § 42-62-13.

[5] RI General Laws § 42-14.5-2 and 42-14.5-3; 230 RI Code of Regulations § 20-30-4.10.

[6] "2023 Commercial Health Insurance Rates Have Been Approved with Modifications," Rhode Island Office of the Health Insurance Commissioner, press release, September 21, 2022, https://ohic.ri.gov/sites/g/files/xkgbur736/files/2022-09/2023%20Rate%20Review%20Process%20Press%20Release%20-%20Approved%20Rates.pdf.

[7] "Connecticut Insurance Commissioner Announces 2023 Health Insurance Premium Rates, Saving ACA Plan Members $138.4 Million," Connecticut Insurance Department, press release, September 2, 2022, https://portal.ct.gov/CID/News-Releases/Press-Releases/Press-Releases-20220902

[8] "DFS Announces 2023 Health Insurance Premium Rates, Saving New Yorkers $799.5 Million," New York State Department of Financial Services, press release, n.d., https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202208171.

[9] "DC Announces 2023 Health Insurance Rates Half of Insurers Decrease Rates After District Review," District of Columbia Department of Insurance, Securities and Banking, press release, September 26, 2022, https://disb.dc.gov/release/dc-announces-2023-health-insurance-rates-half-insurers-decrease-rates-after-district-review#:~:text=Rates%20will%20increase%20overall%20by,Kaiser%20Permanente%20and%20United%20Healthcare.

[10] "Quantifying the Effects of Health Insurance Rate Review," Kaiser Family Foundation, October 2012, https://www.kff.org/wp-content/uploads/2013/01/8376.pdf; Dena Mendelsohn, "Health Insurance Rate Review: A Powerful Tool for Addressing Consumer Health Costs," Altarum Healthcare Value Hub, June 2015, https://www.healthcarevaluehub.org/advocate-resources/publications/health-insurance-rate-review.

[11] Johanna Butler, "Insurance Rate Review as a Hospital Cost Containment Tool: Rhode Island's Experience," National Academy for State Health Policy, February 1, 2021, https://www.nashp.org/insurance-rate-review-as-a-hospital-cost-containment-tool-rhode-islands-experience/#:~:text=The%20rate%20review%20statute%20requires,has%20an%20interest%20in%20affordability.

[12] 230-RICR-20-30-15.

[13] 8 V.S.A. § 4062.

[14] 8 V.S.A. § 4062.

[15] Mila Kofman, executive director of the DC Health Benefit Exchange Authority, interview by author, October 19, 2022.

[16] Ibid.

[17] Kofman interview.

[18] "Overview of States' Health Care Cost-Growth Benchmark Programs," National Academy for State Health Policy, updated April 21, 2022, https://www.nashp.org/how-states-use-cost-growth-benchmark-programs-to-contain-health-care-costs/.

[19] "Hospital Budget Review," State of Vermont Green Mountain Care Board, accessed November 10, 2022, https://gmcboard.vermont.gov/hospital-budget-review.

[20] 230-RICR-20-30-4.

[21] Centers for Medicare and Medicaid Services, National Health Expenditure Fact Sheet, https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NHE-Fact-Sheet, accessed December 5, 2022.

[22] Caitlin Owens, "Employers' coming health care crunch," Axios, September 19, 2022, https://www.axios.com/2022/09/19/employer-health-costs-premiums-workers.

[23] Gravie, "New Study Shows Concern for Rising Healthcare Costs This Open Enrollment Season, Cision PR Newswire, October 4, 2022, https://www.prnewswire.com/news-releases/new-study-shows-consumer-concern-for-rising-healthcare-costs-this-open-enrollment-season-301639999.html.

[24] Altarum, 2022 Healthcare Affordability Scorecard: Illinois, https://www.healthcarevaluehub.org/affordability-scorecard/illinois?select-state=https%3A%2F%2Fwww.healthcarevaluehub.org%2Faffordability-scorecard%2Fillinois, accessed December 5, 2022.

[25] See, for example, United Health Care's "Consumer Justification Narrative" for its 15.9% increase for 2023. It lists key drivers as "an increase in reimbursement rates" and "medical cost trends." Available at https://ratereview.healthcare.gov/files-cjn/2251630_IL_42529_UHCIL_on_ind_pt2_v01_05-25-22.pdf. Similarly, Celtic, with an increase of 13.7%, lists unit cost increased for medical services to increase in 2023, https://ratereview.healthcare.gov/files-cjn/1981681_IL_PY23_Part_II_Justification_v1_5.23.22.pdf. Illinois law permits carriers to redact more information from its public filings than other states we interviewed, so we cannot view the amounts of increase in Illinois that were attributed to medical trend.

[26] HB 21-1232, https://leg.colorado.gov/sites/default/files/2021a_1232_signed.pdf.

[27] Adam Fox, deputy director for Colorado Consumer Health Initiative, personal correspondence with author, November 17, 2022; "Division of Insurance Works to Save Coloradans $326 Million on Health Insurance in 2023," Colorado Division of Insurance, media release, October 25, 2022, https://doi.colorado.gov/news-releases-consumer-advisories/division-of-insurance-works-to-save-coloradans-326-million-on.

[28] Jeanne M. Lambrew, "Maine's Progress in Improving the Affordability of Small Business Health Insurance," Health Affairs Forefront, October 19, 2022, https://www.healthaffairs.org/content/forefront/maine-s-progress-improving-affordability-small-business-health-insurance.

[29] New Mexico Office of Superintendent of Insurance, "2023 Plan Year Individual and Small Group Rate Filing Guidance," https://www.osi.state.nm.us/wp-content/uploads/2022/04/2023PY-QHP-Issuer-Rate-Guidance_Final.pdf, accessed December 5, 2022.

[30] Connor Radnovich, "Oregon's 'Bridge' Health Plan Takes Shape," The Lund Report, October 17, 2022, https://www.thelundreport.org/content/oregon%E2%80%99s-%E2%80%98bridge%E2%80%99-health-plan-takes-shape.

[31] Tashia Sizemore, life and health manager, Michael Sink, senior life and health actuary, Tim Hinkel and Andrew Box, actuaries, Oregon Department of Financial Regulation, interview by author, August 29, 2022.

[32] Cheryl Fish-Parcham and Elisabeth Ryden Benjamin, "Congress Should Appropriate Funds for Consumer Assistance Programs in Every State," Families USA and Community Service Society, July 2021, https://familiesusa.org/wp-content/uploads/2021/07/COV-2021-210_Fund-Consumer-Assistance-Programs-in-Every-State-Issue-Brief_v2.pdf. This issue brief provides a snapshot of some existent state-funded consumer assistance programs.

[33] Kate Ende, Consumers for Affordable Health Care, "Comments Regarding Proposed 2023 Rate Filings," filed with Maine Bureau of Insurance, 2022.

[34] Walter Smith, former executive director, DC Appleseed Center for Law and Justice, interview by author, September 28, 2022.

[35] Adam Fox, deputy director for Colorado Consumer Health Initiative, and Mannat Singh, executive director for Colorado Consumer Health Initiative, interview by author, August 31, 2022.

[36] "Health Insurance Rate Filing," Connecticut Insurance Department, accessed October 25, 2022, https://www.catalog.state.ct.us/cid/portalApps/RateFilingDefault.aspx.

[37]Sizemore et al interview; and Maribeth Guarino, health care advocate, Oregon State Public Interest Group, interview by author, October 12, 2022.

[38] Patrick Tigue, health insurance commissioner for Office of the Health Insurance Commissioner, and Cory King, chief of staff for Office of the Health Insurance Commissioner, interview by author, August 10, 2022.

[39] Tigue and King, interview.

[40] *Colorado General Assembly, House, Standardized Health Benefit Plan Colorado Option*, House Bill 21-1232, 73rd General Assembly, signed June 16, 2021, https://leg.colorado.gov/bills/hb21-1232.

[41] Fox and Singh, interview; Fox, personal correspondence.

[42] Jill Zorn, senior policy officer for Universal Health Care Foundation of Connecticut, interview by author, September 8, 2022; Hugh McQuaid, "Insurers Defend Rate Hike Requests During Public Hearing," CTNewsJunkie.com, August 15, 2022, https://ctnewsjunkie.com/2022/08/15/insurers-defend-that-rate-hike-requests-during-public-hearing/; "Connecticut Insurance Commissioner Announces 2023 Health Insurance Premium Rates, Saving ACA Plan Members $138.4 Million," Connecticut Insurance Department, press release, September 2, 2022, https://portal.ct.gov/CID/News-Releases/Press-Releases/Press-Releases-20220902.

[43] Mike Fisher, chief health care advocate for Vermont Legal Aid, and Eric Schultheis, staff attorney for Vermont Legal Aid, interview by author, September 7, 2022; *Vermonters' Voices: Health Care Doesn't Work If You Can't Afford to Use It* (Burlington, VT: Vermont Legal Aid, January 2020), https://www.vtlegalaid.org/sites/default/files/Vermonters-Voices-Health-Care-Doesnt-Work-If-You-Cant-Afford-to-Use-It.pdf.

[44] 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.

[45] Fisher and Schultheis, interview; Vermont Legal Aid, *Vermonters' Voices*.

[46] Elisabeth Benjamin, vice president of health initiatives for Community Service Society, interview by author, August 30, 2022, and personal correspondence, November 17, 2022; Amanda Dunker, Community Service Society of New York (on behalf of Health Care for All New York), comments regarding Emblem's requested rate changes, July 1, 2022, https://hcfany.org/wp-content/uploads/2022/07/Emblem_HCFANY-comments.pdf.

[47] Benjamin, interview, August 30, 2022. For more information about Community Health Advoctes, see https://www.cssny.org/programs/entry/community-health-advocates, accessed December 5, 2022.

[48] Ende and Woloson, interview.

[49] Maine Code of Regulations, 02-031 C.M.R. ch. 940.

[50] Ende and Woloson, interview.

[51] "About Us," CT.gov, Connecticut State Office of the Healthcare Advocate, accessed November 4, 2022, https://portal.ct.gov/OHA/ODCO/About-Us/About-OHA.

[52] Zorn, interview; personal correspondence with Ted Doolittle, state of Connecticut healthcare advocate, November 18, 2022.

[53] "About CT Healthcare Affordability Index," CT.gov, accessed October 27, 2022, https://portal.ct.gov/healthscorect/affordability-index?language=en_US.

[54] Fox and Singh, interview.

[55] Mila Kofman, interview.

[56] Vanessa Batters-Thompson, executive director for DC Appleseed Center for Law and Justice, and Walter Smith, interview by author, September 28, 2022; DC Code §31-3506.

[57] Fisher and Schultheis, interview.

[58] Tigue and King, interview, August 10, 2022.

[59] Illinois Public Act 102-0900 (Illinois HB 836, 2021-2022), https://legiscan.com/IL/text/HB0836/2021; "Company Bulletin 2022-17 – Health Insurance Data Call Due November 23, 2022," Illinois Department of Insurance, November 2, 2022, https://www2.illinois.gov/sites/Insurance/Companies/Pages/Company-Bulletins.aspx.

[60] 45 CFR 156.80 (d)(2).

[61] Colorado, New Mexico, Pennsylvania, Texas and Virginia require carriers to utilize the induced demand factors published in the risk adjustment methodology, that is, 1.00 for bronze, 1.03 for silver, 1.08 for gold and 1.15 for platinum.

[62] The two states without effective rate review, Oklahoma and Wyoming, undergo rate review at the federal level and also have a significant proportion of enrollees eligible for free gold coverage.

[63] Greg Fann, *Analysis of the 'AV and Cost Sharing Design of the Plan' Factors Used by Health Plans in the Illinois Individual ACA Market* (Axene Health Partners, October 2022), report to Shriver Center on Poverty Law and Families USA. The report recommends that Illinois regulators direct health plans offering products in the Illinois individual Affordable Care Act market to develop premium rates for specific plans using AV and cost-sharing design of plan factors that reflect only 1) paid-to-allowed ratios that are developed using the same standard population for each plan and are relatively consistent with the AV metal values developed for the plans, 2) induced demand factors by metal level and silver on-exchange plan variant that are prescribed by Illinois regulations, and 3) a common "cost-sharing reduction (CSR) defunding adjustment" to reflect the enhanced coverage generosity of silver plans due to the federal government not reimbursing insurers for CSR payments. The CSR defunding adjustment modeled was 1.32, representative of Illinois' 2022 enrollment distribution.

[64] Viara Ianekeva, Julie Weinberg and Colin Baillio, New Mexico Office of the Superintendent of Insurance, interview by author, October 4, 2022.

[65] Rachel Block and Keanan Lane, "Supporting States in Setting Health Care Cost Growth Targets to Improve Affordability," *Health Affairs Forefront*, May 27, 2021, https://www.healthaffairs.org/do/10.1377/forefront.20210526.658347/full/.

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