



NIHCM

State Regulation of the Individual Health Insurance Market

Summary: The impact of recent Federal legislation on the individual health insurance market depends on the characteristics of each State and of those individuals who purchase non-group insurance in those States. This issue brief is the first of a series and provides an overview of selected regulations of the individual market in each of the fifty States. The brief presents State regulation related to rating restrictions, guaranteed issue, and preexisting condition limitations -- subjects that are the focus of recent Federal and State legislation.

CONTEXT

Regulation of the individual insurance market has traditionally been the province of State, rather than Federal, legislation. All States regulate and provide oversight to companies offering products in the individual insurance market. However, States take various approaches to the mix of formal and informal regulation and to the areas they choose to regulate most closely. At the national level, the debate on the recently passed Health Insurance Portability and Accountability Act (the Kassebaum/Kennedy Bill) focused on:

1. Medical underwriting and other rating practices that vary premiums charged based on individual policyholder characteristics;
2. Denial of coverage for high-risk individuals; and
3. Exclusions for preexisting medical conditions.

The three regulatory dimensions reviewed in this brief largely determine the extent to which States regulate insurers' freedom to set prices and eligibility for coverage in the market.

This brief presents regulations imposed on insurers and does not describe business standards insurance companies may voluntarily adopt to address these regulatory issues.

BROAD REGULATORY CONTEXT

States regulate insurers who offer non-group health insurance products in a variety of ways other than those considered here. Our categorization of States does not imply an absence of other regulations or a lack of oversight. Traditional State regulation focuses on several areas:

Rules of trade laws which define acceptable marketing practices and are targeted at reducing risk segmentation;

Financial requirements for proof of stability of carriers before they enter the market;

Risk sharing mechanisms such as minimum loss ratios, disproportionate share adjustments, reinsurance pools, or other risk spreading policies; and

Mandated benefits laws requiring that coverage of certain types of services and/or payment for certain types of providers be included in all insurance products sold or requiring standardization of all plans offered.

Other less traditional legislative initiatives include: health insurance purchasing cooperatives, medical savings accounts, and any willing provider or freedom of choice provisions. In addition, State insurance departments and other regulators may impose significant oversight of companies in this market including, in some cases, prior approval of all rates.

This brief is one of a series based on the May, 1996 report entitled *State Individual Insurance Markets and Impacts of Federal Reform* developed for NIHCM by Barents Group, LLC.

SUMMARY OF THE KASSEBAUM/KENNEDY BILL - THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

- Effects all insurers offering coverage to individuals.
- Insurers must guarantee coverage to individuals who:
 - (1) are not eligible for other coverage;
 - (2) apply within 63 days of termination of prior coverage; and
 - (3) had continuous prior group or government coverage for at least 18 months and exhausted COBRA coverage if eligible.
- An insurer may limit guaranteed issue to its: 2 most popular non-group products; OR 2 products, one offering higher benefits (100-120% standard value), and one with lower (85-99%) benefits (at least a 15% difference).
- For all eligibles: renewal guaranteed and preexisting condition clauses prohibited.
- Federal Fall-back: Federal law applies unless State currently has or implements an acceptable alternative mechanism.

MEDICAL UNDERWRITING AND RATING

Medical underwriting is the practice of varying premiums charged or benefits offered to individuals based on characteristics associated with higher expected medical costs. State rating laws limit how an insurer may vary premiums charged to low and high-risk individuals. The impact of regulation on a market varies in its intensity based upon the severity of limitations. Rating constraints vary in three ways.

Populations governed by the regulation. Regulations may apply to special populations, such as members of high risk pools and/or policyholders of insurers of last resort, or to the State's entire individual market.

Individual characteristics used to determine premium variation. States may limit some or all of the characteristics of individuals used to vary premiums charged. Pure community rating prohibits variations in premiums based on individual characteristics. Generally, the individual insurance market uses the term "community rating" in situations where premium variations based on case characteristics (such as age, sex, and geography) are permitted but experience rating (such as claims experience, health status, or duration of coverage) is prohibited. State departments of insurance often provide informal monitoring and assessments of insurance rates even where formal rating regulations are not in place.

Limits to the amount of premium variation across a population. At the extreme, a State may prohibit medical underwriting of any form. However, many States permit some variation based on health status. A State may limit the variation allowed for certain characteristics through the use of rating bands. Rating bands restrict the variation allowed across all premiums offered by the insurer.

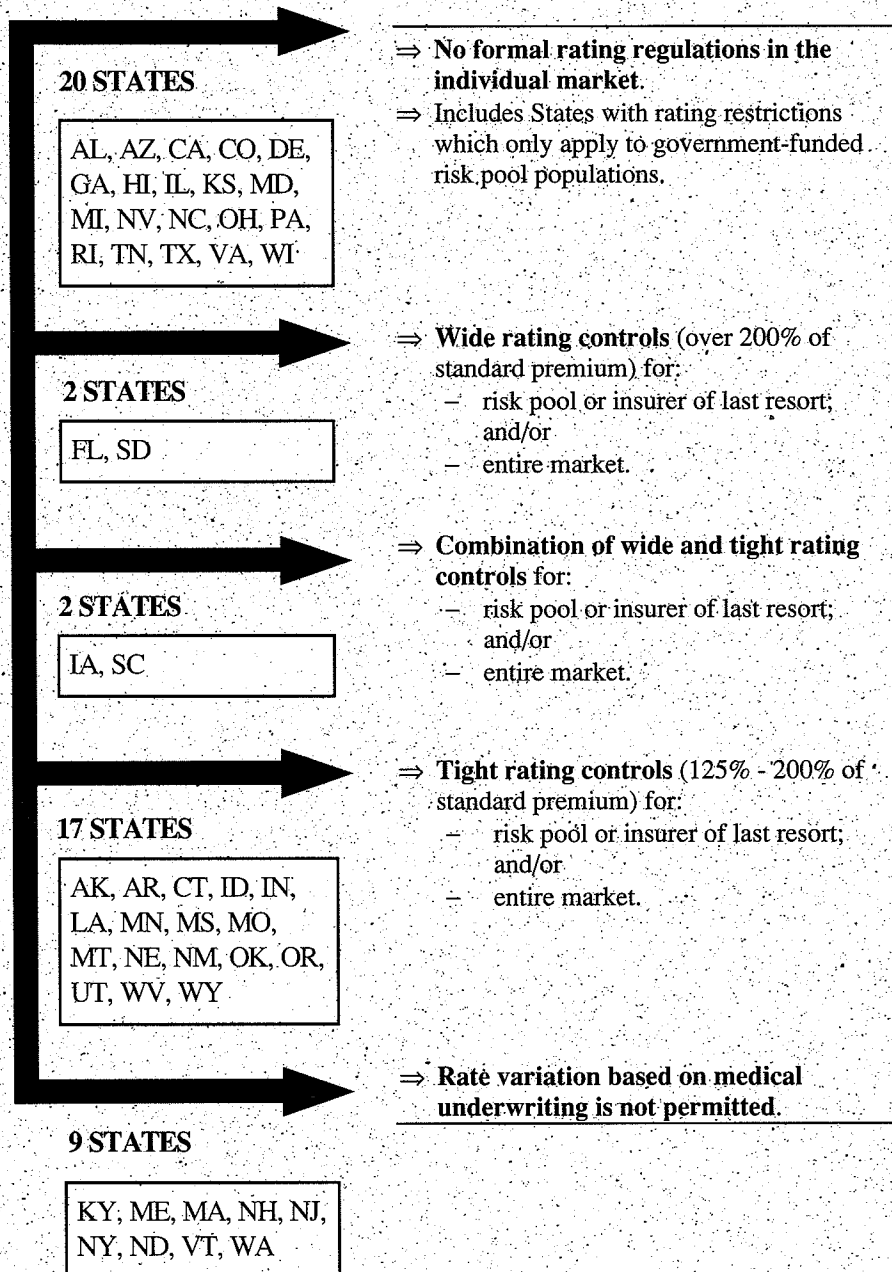
STATE CATEGORIES

Medical underwriting and rating restrictions are grouped into categories according to their restrictiveness on the market. To group States in the middle categories, we combined the extent of regulation with the portion of the market that it regulates.

ANALYSIS

- 20 States do not have rating restrictions in the individual market outside of government-funded risk pools.
- 9 States have eliminated the use of medical underwriting.
- In general, States in the northwest and across the northern border of the U.S. have acted most aggressively to reduce the use of medical underwriting.

CATEGORIES OF REGULATION



GUARANTEED ISSUE

States may vary the population groups to which they require insurers to offer policies. Some States require all insurers in the State to grant a policy to every person who requests coverage, while others do not require insurers to guarantee issue to anyone. Many States qualify guaranteed issue laws by implementing mechanisms to lessen the financial burden on insurers. Mechanisms include:

- Limiting guaranteed issue to individuals who do not qualify for group coverage.
- Limiting the time period during which an insurer must guarantee issue (such as a limited duration open enrollment period).

Such provisions seek to prevent "dumping" of high cost individuals from the group to individual markets, and to prevent individuals from waiting until they are ill to seek coverage.

States may also create mechanisms to distribute the burden of high-risk individuals over the entire market. They may require guaranteed issue up to a percentage of an insurer's overall business, or require issue of a basic health plan instead of the full range of products offered by the insurer.

High risk pools shift the cost of issuing coverage to high-risk individuals to a separate funding stream. Pools are funded by the State or by insurer assessments which spread the excess cost of covering high risk individuals over the whole market. States enacting guaranteed issue normally close risk pools.

Another way to create coverage options for the uninsurable population is for the State to contract with a specific insurer to be the "insurer of last resort." This insurer guarantees issue to all individuals who are unable to get coverage elsewhere in exchange for State financial incentives or tax breaks.

ANALYSIS

- 36 of the States do not require carriers to guarantee issue of individual coverage.
- 14 States require insurers to guarantee issue in this market.

- 29 States operate a high risk pool or insurer of last resort.
- All but 9 States have some mechanism to cover high risk individuals.
- Wide variation in State regulation, but considerable overlap among States which guarantee issue and those which restrict medical underwriting.

⇒ Do not require insurance carriers to guarantee issue.

⇒ Includes government-funded risk pools*.

⇒ Insurer of last resort.

⇒ Perspective on extent of regulation differs for insurer of last resort who must guarantee issue, and other insurers who are not required to issue policies to all who apply.

⇒ High risk pool funded by insurer assessment.

⇒ Guaranteed issue to a cap (enrollment or premium percentage) required of all carriers during open enrollment period.

⇒ + Wall between the group and individual markets.

⇒ Guaranteed issue required of all carriers.

⇒ + Wall between the group and individual markets (carriers need not guarantee issue to individuals who qualify for group coverage).

CATEGORIES OF REGULATION

14 STATES

AL, AZ, CA*, CO*,
DE, GA, HI, IL*,
LA*, NV, NC, TN*,
TX, WV

4 STATES

MD, MI, PA, VA

18 STATES

AK, AR, CT, FL, IN,
KS, MN, MS, MO,
MT, NE, NM, ND,
OK, OR, SC, WI, WY

3 STATES

OH, UT+, SD

11 STATES

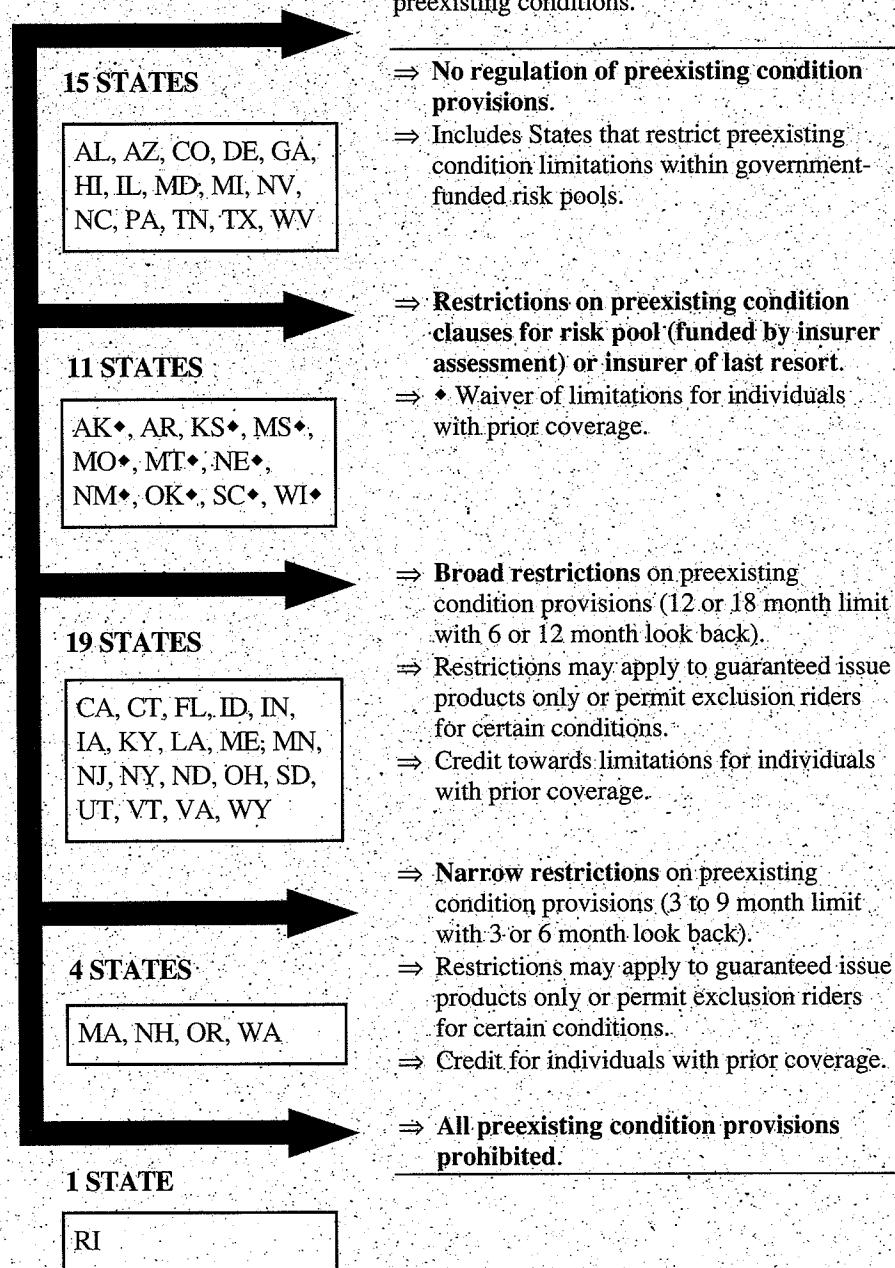
ID, IA+, KY, ME,
MA, NH, NJ+, NY+,
RI, VT, WA

PREEXISTING CONDITION LIMITATIONS

Preexisting condition clauses exclude payment for medical care related to a disease or condition diagnosed or treated before the new coverage is issued. Exclusion waivers permanently exclude treatment for a specific condition known to exist at the time of application. Other preexisting condition clauses specify a waiting period, after which the condition will be covered, and a look back period, the length of time insurers may "look back" into an individual's history to identify preexisting conditions.

State regulations may prohibit the use of preexisting condition provisions altogether. More commonly, regulations place limitations on the use of preexisting condition provisions in two ways: (1) by limiting the exclusion period to a specified number of months following the effective date of coverage, or (2) by setting the length of "look back" allowed. Additionally, some laws require insurers to credit the time an enrollee was covered by previous health coverage toward satisfying a new preexisting condition waiting period.

CATEGORIES OF REGULATION



STATE CATEGORIES

We grouped States with restrictions on preexisting condition limitations within government-funded risk pools with States who do not regulate insurers' use of preexisting conditions. States that restrict preexisting condition limitations in high risk pools funded by insurer assessment are grouped in a separate category from States with restrictions that affect the entire market. This separation reflects the fact that preexisting conditions have significant cost implications beyond the uninsurable population.

ANALYSIS

- 15 States do not regulate the use of preexisting condition limitations. These States tend to be located in the southern portion of the U.S., although some southern States do regulate this practice (e.g., Louisiana and Florida).
- 23 States restrict the use of preexisting condition limits by insurers in the overall individual market, and all of these States require insurers to credit prior coverage against new limitations.
- Rhode Island is the only State which prohibits the use of preexisting condition limitations completely.

COMBINED REGULATORY CATEGORIES

The following chart groups States into categories of regulation for medical underwriting, guaranteed issue, and preexisting condition limitations. Natural groupings of States emerge from the combined list, reflecting similarities in the way these types of regulations function in the individual insurance market.

Combined Regulatory Categories of Fifty States

CATEGORY 0

AL, AZ, CO, DE, GA, HI, IL, NC, NV, TN, TX

- No regulation on three dimensions studied; OR
- Government-funded high risk pool.

CATEGORY 1

MD, MI, PA

- Insurer of last resort.

CATEGORY 2

CA, KS, WV, WI

- High risk pool funded by insurer assessment with preexisting condition limitations; OR
- Preexisting condition limitations over entire market; OR
- Tight rating controls.

CATEGORY 3

VA

- Insurer of last resort, and preexisting condition limitations for all individual products (except those of insurer of last resort).

CATEGORY 4

AK, AR, FL, LA, MO, MS, MT, NE, NM, OK, OH, RI, SC

- Tight rating controls and high risk pool funded by insurer assessment with preexisting condition limitations; OR
- Tight rating controls, government-funded high risk pool, and preexisting condition limitations over entire market; OR
- Wide rating controls, high risk pool funded by insurer assessment, and preexisting condition limitations over entire market; OR
- Guaranteed issue mandated, and preexisting condition clauses prohibited over entire market.

CATEGORY 5

CT, IN, MN, OR, SD, WY

- Tight rating controls, high risk pool funded by insurer assessment, and preexisting condition limitations over entire market; OR
- Wide rating controls, guaranteed issue, and preexisting condition limitations over entire market.

CATEGORY 6

IA, ID, ND, UT

- Community rating, high risk pool funded by insurer assessment, and preexisting condition limitations over entire market; OR
- Tight rating controls, guaranteed issue, and preexisting condition limitations over entire market.

CATEGORY 7

KY, ME, MA, NH, NJ, NY, VT, WA

- Community rating, guaranteed issue, and preexisting condition limitations over entire market.

Source: Barents Group, LLC

PURPOSE OF COMBINED CATEGORIES

- Displays the effects of regulation by the intensity of provisions in 3 aspects:
 1. populations affected by regulation
 2. depth of restrictions contained in regulation
 3. extent of variation allowed by regulation
- Reflects that certain combinations of provisions have more significant implications for the market than the sum of their individual effects

1996 INDIVIDUAL HEALTH INSURANCE ENACTMENTS

- Federal Health Insurance Portability and Accountability Act of 1996
- State 1996 Enactments:
 - Arkansas - high risk pool
 - Colorado - guaranteed renewal
 - Florida - guaranteed renewal and preexisting condition limitations
 - Kentucky - community rating and preexisting condition limitations
 - Massachusetts - community rating, guaranteed issue, guaranteed renewal, and preexisting condition limitations
 - Oklahoma - high risk pool
 - South Dakota - rating bands, guaranteed issue to a cap, guaranteed renewal, and preexisting condition limitations
 - Virginia - guaranteed renewal and preexisting condition limitations

NIHCM Issue Brief

Selected State Individual Health Insurance Regulations

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ST.	Rating Restrictions (maximum allowed)	No Exp. Rating	High Risk Pool / ILR	Guaranteed Issue	Preex Condition Limitations
AL					
AK	200% RISK		RISK		6/3 RISK*
AZ					
AR	150% RISK		RISK		6/12 RISK
CA	125% GOV RISK		GOV RISK		12*/ 3/6 GOV RISK*
CO	175% GOV RISK		GOV RISK		6/6 GOV RISK*
CT	150% RISK		RISK		12/12*; 12/6 RISK*
DE					
FL	250% RISK		RISK		24/24*, 12/6 RISK
GA					
HI					
ID	170% E			X	12/6*
IL	135% GOV RISK		GOV RISK		6/6 GOV RISK*
IN	150% RISK		RISK		18/12*; 6/6 RISK*
IA	203%E 150% RISK		RISK	X WALL	12/12*; 6/6 RISK*
KS			RISK		3/6 RISK*
KY		X		X	12/12*
LA	120%E 200% GOV RISK		GOV RISK		12/12*; 6/6 GOV RISK*
ME		X		X	12/12*
MD			ILR		
MA		X		X	6/6*
MI			ILR		
MN	120%E 125% RISK		RISK		12/6*; 6/3 RISK*
MS	175% RISK		RISK		6/6 RISK
MO	200% RISK		RISK		12/6 RISK*
MT	150% RISK		RISK		12/60 RISK*
NE	135% RISK		RISK		6/6 RISK*
NV					
NH		X		X	9/3*
NJ		X		X WALL	12/6*
NM	150% RISK		RISK		6/6 RISK*
NY		X		X WALL	12/6*
NC					
ND	135% RISK	X	RISK		12/6*; 6/3 RISK*
OH				X CAP	12/6*
OK	125% RISK		RISK		12/6 RISK*
OR	150% RISK		RISK		6/6*; 6/6 RISK*
PA			ILR		
RI				X	PROHIBITED
SC	140%E 300% RISK		RISK		6/6 RISK*
SD	220%			X-CAP	12/12*
TN			GOV RISK		
TX					
UT	200%E 150% GOV RISK		GOV RISK	X WALL, CAP	12/6*; 6/6 GOV RISK*
VT		X		X	12/12*
VA			ILR		12/12*
WA	150% RISK	X		X	3/3*; 6/6 RISK*
WV	130% E				
WI			RISK		6/6 RISK*
WY	125% RISK		RISK		12/6*; 12/6 RISK

Abbreviations and Symbols: E = entire market; RISK = high risk pool; GOV = government-funded; ILR = insurer of last resort; WALL = no guaranteed issue to individuals eligible for group coverage; CAP = guaranteed issue to a cap; and * = credit / waiver for previous coverage. Preexisting condition limitations are listed as months of exclusion / months of look back period.

Source: Barents Group, LLC