

N.Y. mulls control of rates

By [WILL ASTOR](#) - 3/19/2010

After failing to make it to a vote last year, a measure that would restore health insurance rate-setting powers to the New York superintendent of insurance could pass this year as part of Gov. David Paterson's budget.

Paterson's drive to overturn the Empire State's so-called file-and-use law and reinstate a system of prior approval for premium hikes is controversial.

The state's drive to juice up its regulatory powers reflects an ongoing tug-of-war between the insurance industry and the Department of Insurance.

Former Insurance Superintendent Gregory Serio lost a court case several years ago in which he sought unsuccessfully to force Excellus BlueCross BlueShield to scale back 20 percent to 30 percent rate increases on direct-pay subscribers.

Introducing the governor's current prior-authorization proposal several months ago, Insurance Superintendent James Wrynn cited file-and-use applications for rate increases of up to 33 percent and called prior approval a preventive measure that "would allow us to consider the insurer's overall financial condition when we review proposed premium increases."

On the other side of the debate are the insurance industry and business interests, including the Rochester Business Alliance Inc., that have qualms about prior approval. To such critics, prior approval is another name for government price control.

"Insurance has been a heavily regulated industry for years, and health care and politics are intertwined," Business Council of New York Inc. president and CEO Kenneth Adams told lawmakers at a joint hearing of the Assembly Ways and Means and Senate Finance committees last month.

"Much like the budget, which has become a politicized and flawed process, reinstatement of prior approval would make rate setting a subjective process likely leading to rate suppression ignoring the underlying cost drivers impacting rates," he said.

Such objections notwithstanding, the prior approval measure's inclusion in the governor's budget bill rather than as a stand-alone bill would make the proposal far likelier to pass than previous attempts to scotch file-and-use, said Assemblyman Joseph Morelle, D-Irondequoit, chairman of the Assembly's Insurance Committee.

Fueled by seemingly unending rounds of double-digit rate hikes, Morelle said, public sentiment increasingly has moved against the insurance carriers, a trend that has not gone unnoticed by lawmakers.

"Most of my colleagues favor prior approval," the assemblyman said.

In a Rochester Business Journal Snap Poll published in this edition of the paper, respondents favored reinstatement of prior approval by 72 percent to 28 percent. The poll results appear on page 39.

"Cost containment is crucial for any health care reform to work, and this is at least a step in a positive direction, if not the final answer," wrote poll respondent Richard Stevenson, CEO and a co-founder of CobbleSoft International.

Enacted in the late 1990s and strengthened in the early 2000s, file-and-use makes health insurance companies' annual rate increases virtually automatic. Before file-and-use, insurers had to submit rate increase requests to state insurance regulators, who had the power to say yea or nay.

Under the old prior-approval system, regulators sometimes took months to review and act on rate requests, creating problems for insurers as well as for employers, said James Redmond, Excellus vice president of communications.

Under file-and-use, rates filed with the Insurance Department in November or December automatically take effect the following Jan. 1. Also possible are midyear increases, such as a rate hike that MVP Health Care imposed last year after the governor slapped new taxes on insurance carriers as part of a deficit reduction program.

Provisions of the current law give regulators the power to review rate hikes and order insurers to refund amounts determined to have been overcharged, measures that adequately protect consumers without creating bureaucratic hurdles for carriers, Redmond said.

In addition to making rate hikes subject to prior approval, Paterson's bill would increase the medical loss ratio—the percentage of premium dollars that insurers must spend on medical claims—from present levels of 80 percent for direct-pay policies and 75 percent for small groups to a uniform 85 percent.

A uniformly applied medical loss ratio requirement could be troublesome, robbing insurance carriers of the flexibility to even out expenses among products and business lines, said Leslie Moran, a spokeswoman for the New York Health Plan Association Inc., an Albany-based trade group representing 24 health insurance carriers.

Also troubling, she added, is that the governor's proposal does not address longstanding disagreements between insurers and the Department of Insurance over which expenses can be regarded as medical costs.

Morelle said he introduced the governor's stand-alone bill last year as a matter of courtesy but saw it as flawed and declined to move it out of committee. He sees similar problems with this year's measure.

As the measure is written, rates could end up being a political football, with regulators bowing to legislative or gubernatorial pressure to keep premiums artificially low, said Morelle, echoing concerns raised by insurance industry and business interests. This could be especially true in election years, he added.

While conceding those points, Morelle said, aligning completely with either side is difficult. The complexity of calculations and a necessary level of uncertainty in the actuarial predictions that go into setting rates make it hard to say precisely whether a given rate is fair.

"There has always been disagreement between the regulators and the insurance companies, and there probably always will be," Morelle said. "It's not that either side is necessarily right or wrong. It depends on what your assumptions are."

Morelle said he is working with Senate Insurance Committee chairman Neil Breslin, D-Albany, on possible changes to counter what Morelle sees as flaws in the governor's prior-authorization measure.

The alterations Morelle hopes to make in the measure would:

- Require the Department of Insurance to stay within the same actuarial guidelines as insurance carriers when altering insurance companies' rate requests;
- Require regulators to review rates in a timely fashion; and
- Set the medical loss ratio requirement below Paterson's proposed 85 percent but no lower than 80 percent.

Moran declined to comment on the modifications Morelle outlined.

"We recognize that medical costs need to be brought under control, and we've been talking with Joe. We would be interested in discussing any formal proposal he might make with him and with the Senate," Moran said.

In the meantime, she added, the insurance industry's analysis of the governor's proposal remains the same: It would hobble insurers, imposing price controls at the same time when the state is imposing some \$4 billion in taxes on insurance companies and failing to address the underlying causes behind premium increases—rising medical and pharmaceutical costs.

At the heart of the debate-and the national health care debate-is a question: Is the insurance industry merely a messenger tasked with reminding us that health care spending is out of control, or is it a primary factor in driving up costs that needs reining in by government regulators? It is not easily answered.

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