



NEWS RELEASE

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ONLY 11 STATES AND THE DISTRICT OF COLUMBIA HAVE TAKEN ACTION TO IMPLEMENT THE AFFORDABLE CARE ACT'S 2014 HEALTH INSURANCE MARKET REFORMS

State Action Needed for Full Enforcement of Law's Consumer Protections, or Federal Government Will Step In

New York, NY, February 1, 2013—Only 11 states and the District of Columbia have passed laws or issued regulations to implement the Affordable Care Act's major health insurance market reforms that go into effect in 2014, according to a new Commonwealth Fund report. Thirty-nine states have not yet taken action to implement these requirements, potentially limiting their ability to fully enforce the new reforms and ensure that consumers receive the full protections of the law. These reforms include bans on denying people health insurance due to preexisting conditions, a minimum benefit standard, and limits on out-of-pocket costs.

According to the report, *Implementing the Affordable Care Act: State Action on 2014 Market Reforms*, by Katie Keith, Kevin W. Lucia, and Sabrina Corlette of Georgetown University, states that do not pass new legislation or issue new regulations may lack the authority and tools necessary to ensure that health insurance companies in their state are complying with the new rules, unless regulators have existing authority to enforce federal law. If states fail to ensure compliance with the rules, responsibility for enforcement, the authors say, could default to the federal government.

"The reforms to health insurance under the Affordable Care Act are a huge boon to consumers, who for decades have been forced to buy health insurance in a marketplace where insurers can discriminate against anyone who is sick," said Commonwealth Fund vice president Sara Collins. "This all changes in 2014. But because insurance regulation falls to the states, states need to take action to make sure they can enforce the law and ensure their residents can fully benefit from it."

The health insurance market reforms that begin in 2014 apply to plans both inside and outside the state health insurance marketplaces and include:

- **Guaranteed Issue:** Requires insurers to accept every individual and employer that applies for coverage.

- **Ban on Waiting Periods:** Employers cannot impose waiting periods longer than 90 days before an employee can be eligible for coverage.
- **Rating Requirements:** Insurers are restricted from using health status, gender, and other such factors in setting premiums.
- **Ban on Preexisting Condition Exclusions:** Insurers cannot exclude or limit coverage for people with preexisting health problems.
- **Essential Health Benefits:** Requires insurers to cover a comprehensive set of health benefits.
- **Out-of-Pocket Cost Limits:** Holds out-of-pocket costs to the level established for high-deductible health plans that qualify for health savings accounts.
- **Actuarial Value:** Requires insurers to cover at least 60 percent of total costs under each plan and sell plans that meet new benefit tiers based on average costs covered.

For their study, the researchers reviewed actions taken by states and the District of Columbia to implement the 2014 reforms between January 1, 2010, and October 1, 2012. They found that states have taken the following steps:

- One state, Connecticut, has passed legislation that addressed all seven of the new reforms.
- Another state, California, passed legislation on six of the seven reforms.
- Nine states—Arkansas, Maine, Maryland, New York, Oregon, Rhode Island, Utah, Vermont, and Washington—and the District of Columbia have passed laws or issued new regulations covering at least one of the seven new market reforms.

According to the authors, future state action is critical. Without new legislation, regulators in at least 22 states would be limited in their ability to use all of the tools they need to protect consumers under the Affordable Care Act. The authors say that while states can use existing authority to promote compliance with many of the law's requirements, "questions remain about how effectively states can enforce the 2014 market reforms without new or expanded legal authority."

"Because few states have taken formal action to date, we expect 2013 legislative sessions to be a critical time for state policymakers who wish to limit direct federal enforcement of the reforms and for consumers expecting to benefit from these new protections," said Katie Keith, the study's lead author. "State legislators and regulators should consider whether new legislation or regulations—either to amend existing state law or to give their insurance department more authority—are adequate to ensure meaningful regulatory oversight and promote consumer protections at the state level."

Moving Forward

Despite finding that few states have acted to implement the 2014 health insurance market reforms, the authors expect additional state action in 2013. A prior analysis of state action taken

to implement the Affordable Care Act's 2010 health insurance market reforms found that nearly all states ultimately required or encouraged compliance with those reforms, which included bans on lifetime limits on benefits and dependent coverage for young adults up to age 26. The authors note that uncertainty around the law due to last year's Supreme Court challenge and the recent presidential and congressional elections could have caused states to delay taking action on the 2014 market reforms.

In states that do not take new action, additional coordination may be required between state and federal regulators to address enforcement gaps. As states contemplate new action, they are likely to look to how federal regulators define what it means for a state to "substantially enforce" these reforms, and whether this standard will demand that states have explicit enforcement authority.

"It is encouraging that nearly all states took action on the Affordable Care Act's early market reforms in 2010," said Commonwealth Fund president David Blumenthal, M.D. "Now, it is critical that states do the same with these reforms, to help ensure that their residents benefit from secure, affordable health insurance coverage."

The report will be available on February 1 at:

<http://www.commonwealthfund.org/Publications/Fund-Reports/2013/Jan/State-Action-2014-Market-Reforms.aspx>.

An interactive map showing state actions on the 2014 market reforms will be available at:

http://www.commonwealthfund.org/usr_doc/site_docs/slideshows/StateAction/StateAction2014.html.

Methodology: This analysis is based on a review by researchers at the Georgetown University Health Policy Institute's Center on Health Insurance Reforms of new actions taken by all 50 states and the District of Columbia between January 1, 2010, and October 1, 2012, to implement or enforce seven of the Affordable Care Act's most critical consumer protections that go into effect for health insurance plan or policy years beginning on or after January 1, 2014. In the brief, these provisions are referred to as the Affordable Care Act's 2014 market reforms. The review included new state laws, regulations, and subregulatory guidance. The resulting assessments of state action were confirmed by state regulators.

State regulators were also surveyed about their authority to enforce or write new regulations regarding the 2014 market reforms. Forty-one states responded to the survey, although the report identifies only the 11 states that took new action on their enforcement and rulemaking authority. The states that may rely on their existing enforcement and rulemaking authority to enforce the Affordable Care Act are not identified, with findings presented only in aggregate.

The Commonwealth Fund is a private foundation supporting independent research on health policy reform and a high performance health system.