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Issue Brief

Child-Only Coverage and the Affordable Care Act: Lessons for Policymakers

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ABSTRACT: The Affordable Care Act prohibited insurers from denying or limiting coverage for children under the age of 19 in 2010. In response, some insurers ceased to offer coverage to children in need of individual health insurance, known as a "child-only" policy. This issue brief examines new state legislative and regulatory action to promote the availability of child-only policies in response to this market disruption. The analysis finds that 22 states and the District of Columbia passed new legislation or issued a new regulation or subregulatory guidance. As a result, child-only coverage is available in nearly all of these states. These findings suggest that states have flexibility to take innovative actions to maintain or improve their markets and insurers are highly sensitive to the risk of adverse selection. The findings also suggest the need for meaningful regulatory incentives to avoid market disruption in successfully implementing broader reforms in 2014.

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OVERVIEW

Because most states do not require insurers to issue coverage to individuals on a guaranteed basis, private insurers can choose whether to provide health insurance to individuals with a preexisting condition. Insurers typically evaluate individuals with preexisting conditions—which may range from hay fever to cancer—as being at an increased risk of illness. By declining to cover such individuals, insurers avoid paying claims associated with costly medical care.

The denial of coverage to individuals with preexisting conditions has resulted in significant barriers to accessing care. To help eliminate these barriers, the Affordable Care Act prohibits insurers from denying or limiting coverage because of preexisting conditions. Although these reforms will be in effect for all individuals in 2014, the Affordable Care Act banned insurers from limiting coverage because of preexisting conditions for children under the age of 19, effective September 23, 2010. In implementing this requirement, the federal government also prohibited insurers from denying coverage to children under age 19 because

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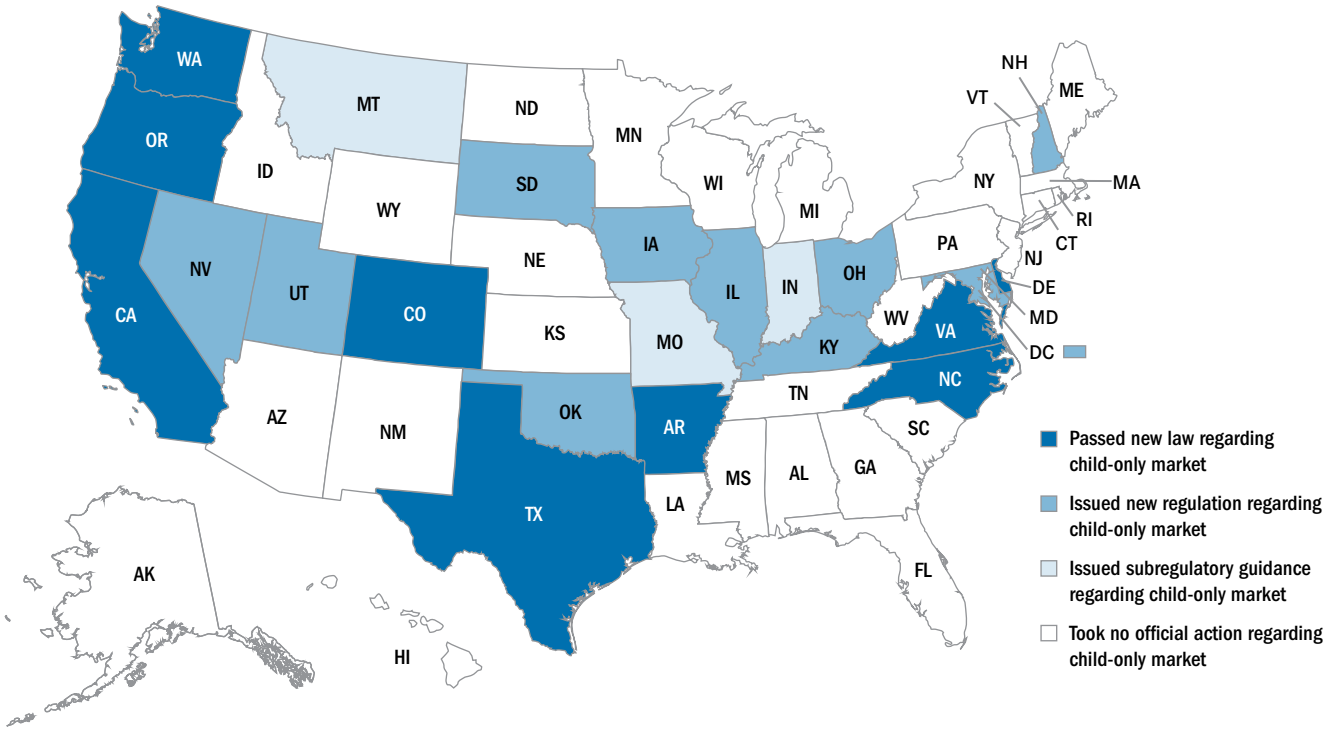
of preexisting conditions. This ban applies to all insurers offering new plans in the individual market beginning on or after September 23, 2010.

In response, some insurers ceased to offer policies to children in need of an individual health insurance policy. To help ensure that child-only policies—that is, individual health insurance plans made available to children under age 19 with no parent or guardian covered on the same policy—were available, states took a number of legislative and regulatory actions. This brief examines actions taken by states between January 1, 2010, and January 1, 2012, to promote the availability of child-only policies. The analysis shows that 22 states and the District of Columbia took action (Exhibit 1). Of these, nine states passed new legislation, with half of these states also issuing a regulation or subregulatory guidance. Another 10 states and the District of Columbia adopted new regulatory requirements, and three states issued new subregulatory guidance. States took a variety of regulatory approaches, including requiring insurers to offer child-only policies, establishing open enrollment periods, and developing reinsurance mechanisms.

Many—although not all—of these efforts were successful at encouraging insurers to make child-only policies available, suggesting that states have the flexibility to take innovative actions to maintain or improve their markets. The findings also suggest that insurers are highly sensitive to the risk of adverse selection and that there is a critical need for regulatory incentives—such as the individual mandate, federal tax subsidies for coverage, premium stabilization programs such as reinsurance and risk adjustment, uniform market rules, and other incentives for insurer participation—to avoid adverse selection and market disruption. These findings will help ensure that state policymakers are aware of the variety of actions that states have taken to fully implement this important protection, as well as inform

Exhibit 1. State Action to Promote the Availability of Child-Only Coverage, as of January 2012



Notes: Maine, Massachusetts, New Jersey, New York, and Vermont required insurers to provide coverage to individuals on a guaranteed basis prior to the Affordable Care Act and, thus, already prohibited the denial of coverage to children under age 19. Kentucky issued a regulatory order which is binding on all insurers marketing individual health insurance. Nevada issued a temporary regulation which expired. The state currently has no rules regarding child-only coverage. Texas passed a new law allowing the Department of Insurance to adopt rules to "increase the availability of coverage to children younger than 19 years of age" but no new regulations have yet been issued.
Source: Authors' analysis.

federal and state policymakers about the strategies needed to successfully implement broader insurance reforms in 2014.

BACKGROUND

Millions of Americans are affected by preexisting conditions.[1] For those who do not have access to group health insurance through an employer or who are ineligible for public programs, obtaining coverage as an individual can be extremely challenging.[2] This is because most states allow insurers in the individual market to deny coverage or limit benefits because of a preexisting condition. Prior to the Affordable Care Act, only six states prohibited this practice.[3]

In states that allow such practices, insurers can deny coverage to children in the individual market. A "child-only" policy is an individual policy sold to a child under age 19 without any other beneficiary covered under that policy, such as a parent. Children may need such policies when, for example, their parents work for an employer that does not offer health insurance to dependents. Or, in another scenario, children may need such a policy if they live with grandparents who receive coverage through Medicare and they are not similarly eligible for coverage through a public program.[4]

Regulators in some states indicated that child-only policies constitute approximately 10 percent of the policies sold in the state's individual market.[5] But, in most states, such data are unavailable and the number of policies sold is generally presumed to be low. This may be because children are the most-insured population in the country and have access to coverage through employer-sponsored insurance, Medicaid, and the Children's Health Insurance Program (CHIP), among other sources.[6]

Insurers deny children's applications in a small but significant number of cases. In 2009, insurers reported denying more than 20,000 applications for child-only coverage nationwide.[7] This figure is likely conservative because of the effect of "street underwriting," in which brokers or agents may discourage parents from applying for coverage because of a child's preexisting condition.[8]

The federal government estimates that about 540,000 uninsured children would be denied coverage or benefits because of a preexisting condition if these children applied for coverage and that up to 62,000 uninsured children with preexisting conditions would gain new coverage in the individual market as a result of this new Affordable Care Act requirement.[9,10] Children are often perceived as a low-cost population, but medical expenditures for children with private coverage are rising faster than the costs for any other age group,[11] and children with preexisting conditions are expected to have medical expenses and health needs that are greater than those of an average child.[12]

The Affordable Care Act expressly prohibits insurers from limiting coverage for children under age 19 because of a preexisting condition.[13] In regulations implementing this requirement, the federal government interpreted this provision to also prohibit insurers from denying coverage to children under age 19 because of a preexisting condition.[14] This ban applies to all insurers offering new plans in the individual market beginning on or after September 23, 2010.[15]

By expanding coverage options for children under age 19, this provision was expected to improve access for children with preexisting conditions while reducing family out-of-pocket costs and job-lock (i.e., the inability of an employee to freely leave a job because of the loss of health insurance benefits).[16] Indeed, the insurance industry pledged to address "the significant hardship that a family faces when they are unable to obtain coverage for a child with a pre-existing condition."[17] Despite this commitment, some insurers began to cease offering child-only coverage even before the provision went into effect.[18]

Insurers reported that their decision to cease offering child-only coverage resulted from uncertainty about how the Affordable Care Act would be implemented and a fear of adverse selection.[19] They were particularly concerned about attracting a disproportionate share of sick children.[20] Because the Affordable Care Act did not include a concurrent mandate that

all children—both healthy and sick—purchase health insurance, the industry feared that parents would wait until a child became sick before purchasing a policy.[21] And because an insurer could no longer deny coverage to a sick child under the Affordable Care Act, the insurer could be forced to pay for costly medical care which would "fuel a destructive spiral" and ultimately lead to higher premiums for all children.[22] Other insurers suggested that all insurers be required to offer child-only policies because, without such a requirement, those insurers that chose to offer coverage were "at a disadvantage because of the additional risk they are assuming by covering children with no medical underwriting."[23]

When some insurers announced plans to discontinue issuing child-only policies, the federal government issued guidance to clarify its new requirements. Under this guidance, insurers can—among other options—limit the time period during which a child can enroll in coverage; increase the premium for a child with a preexisting condition; and impose a penalty when a child drops their coverage and subsequently reenrolls in coverage.[24] These options are available to the extent they are consistent with state law.[25]

Despite this federal guidance, insurers continued to cease—or declined to resume—offering child-only coverage in some states.[26] Federal law does not require insurers to make coverage available, but states can adopt requirements that are more stringent than the federal law so long as the requirements do not interfere with the application of the Affordable Care Act.[27] This study reviews and analyzes state efforts to do so and finds that nearly half of all states took action to promote the availability of child-only policies. As a result of these actions, regulators in the majority of these states reported that insurers are currently offering child-only policies.

ABOUT THIS STUDY

This analysis is based on a review of new actions taken by all 50 states and the District of Columbia between January 1, 2010, and January 1, 2012, to promote the availability of child-only policies for health insurance plans or policy years beginning on or after September 23, 2010, in the individual health insurance market. Our review included new state laws, regulations, and subregulatory guidance. The resulting assessments of state actions were confirmed by state regulators.

This analysis is focused on the availability of child-only policies in the individual market, rather than on the Affordable Care Act's prohibition on preexisting condition exclusions on children under age 19 which applies in both the individual and group markets. Previous analysis by the authors shows that nearly all states and the District of Columbia are requiring or encouraging compliance with the prohibition on preexisting condition exclusions on children under age 19.[28] This analysis is not repeated here, and this brief does not include a review of state actions related to the ban on preexisting condition exclusions.

Some states have relied on existing programs, such as the state's high-risk pool or the federal Pre-Existing Condition Insurance Plan, as a source of coverage for children with preexisting conditions.[29] Some states, such as Kansas, passed new legislation to allow children under the age of 19, including those with preexisting conditions, to enroll in the high-risk pool if commercial child-only policies are not available for sale in their county. Other states, such as New Mexico, amended or reinterpreted their high-risk pool eligibility rules to allow children under the age of 19 to enroll in coverage.[30] Such changes—though critical to ensuring that children have access to coverage before 2014—are not considered new state action to encourage insurers to offer commercial child-only policies and are not addressed in this analysis.

Several states—Maine, Massachusetts, New Jersey, New York, and Vermont—required insurers to provide coverage to individuals on a guaranteed basis prior to the Affordable Care Act and, thus, already prohibited the denial of coverage to children under age 19. These states may not have taken new action in response to the Affordable Care Act, and the authors did not analyze whether existing state laws are consistent with federal requirements.

This analysis also only reviews whether insurers are offering child-only policies in the states that took new action to encourage insurers to do so; this is not a review of the availability of child-only policies in all 50 states and the District of Columbia. Although questions have been raised about the availability of child-only policies nationwide, many states do not collect this information and determining whether child-only coverage is being issued in each state is outside the scope of this analysis. In addition, our study is limited to whether child-only policies were available to families in need of coverage; we did not evaluate the affordability or adequacy of child-only policies currently sold. Because of this limitation, further study is needed to determine whether the state action described in this issue brief fully meets the goals of the Affordable Care Act in improving access to adequate and affordable health insurance coverage.

FINDINGS

Between January 1, 2010, and January 1, 2012, 22 states and the District of Columbia took action to promote the availability of child-only policies. These actions varied considerably. This issue brief reviews the types of action taken by these states and spotlights states that have been particularly innovative and successful in promoting the availability of child-only coverage.

Twenty-Two States and D.C. Took Action on Child-Only Coverage

Of those states that took new action, the majority—19 and the District of Columbia—made legislative and regulatory changes that are legally binding on insurers. An additional three states issued nonbinding subregulatory guidance.

Exhibit 2. Types of State Action to Promote the Availability of Child-Only Policies

Extent of State Action on Child-Only Coverage	Legal Effect of the Change	Number of States	States
State passed a new law to promote the availability of child-only policies	New laws are binding on insurers subject to new law	9	**Arkansas** **California** **Colorado** Delaware North Carolina **Oregon** Texas Virginia **Washington**
State issued a new regulation to promote the availability of child-only policies	New regulations are binding on insurers subject to new regulation	11	District of Columbia Illinois Iowa **Kentucky** Maryland Nevada **New Hampshire** Ohio Oklahoma South Dakota Utah
State did not pass a new law or issue a new regulation, but issued new subregulatory guidance to promote the availability of child-only policies	Subregulatory guidance is typically not binding and expresses the state's interpretation of state law	3	Indiana Missouri Montana

Notes: **States in bold** took additional action by issuing a new regulation or subregulatory guidance regarding child-only coverage. Maine, Massachusetts, New Jersey, New York, and Vermont required insurers to provide coverage to individuals on a guaranteed basis prior to the Affordable Care Act and, thus, already prohibited the denial of coverage to children under age 19. Texas passed a new law allowing the Department of Insurance to adopt rules to "increase the availability of coverage to children younger than 19 years of age" but new regulations have yet to be issued. Kentucky did not issue a new regulation but the insurance commissioner issued a binding order regarding child-only coverage. Nevada issued a temporary regulation which expired. Nevada currently has no special rules regarding child-only coverage. Montana issued a nonbinding letter to insurers allowing them to screen children for other sources of coverage before issuing a child-only policy as an alternative to ceasing to offer child-only coverage or using open enrollment periods.
Source: Authors' analysis.

Nineteen States and D.C. Took Binding Action by Passing Legislation or Issuing a New Regulation

Nineteen states and the District of Columbia took legislative or regulatory action to promote the availability of child-only policies (Exhibit 2). Of these, nine states passed legislation, with more than half also issuing a new regulation or subregulatory guidance (Exhibit 2, bolded states). An additional 10 states and the District of Columbia issued a new regulation, with two states also issuing new subregulatory guidance.

Legislative and regulatory actions are legally binding on insurers subject to the new law or regulation. The binding nature of such action means that insurers must comply with new rules. However, states may write these rules to apply only under certain circumstances, such as when an insurer agrees to offer child-only policies. Thus, these new requirements may not apply if an insurer declines to sell child-only policies.

Three States Took Nonbinding Action by Issuing Subregulatory Guidance

Three states issued subregulatory guidance to encourage insurers to offer child-only policies (Exhibit 2). Subregulatory guidance usually expresses the state's interpretation of existing law, and can include bulletins, memoranda, letters, and notices to insurers from the state division of insurance. Although subregulatory guidance is usually not legally binding, insurers are likely to conform to guidance issued by the state agency empowered to approve or disapprove their products for marketing and sale. Such guidance is therefore likely to spur a change in practice, if not in law.

These findings—that 22 states and the District of Columbia passed new legislation or issued new regulations or subregulatory guidance—suggest that states have been active in adopting regulatory mechanisms to require or encourage insurers to offer child-only coverage. The next section discusses how states varied in their approaches to doing so.

States Adopted Three Approaches to Promote the Availability of Child-Only Coverage

States adopted a variety of regulatory mechanisms to promote the availability of child-only policies (Exhibit 3). This section will discuss three main categories of state action: states that require insurers to offer policies; states that do not require insurers to offer policies; and states that established reinsurance pools. This section also spotlights states that have been particularly innovative in their regulatory approach and highlights other trends in state action.

States That Require Insurers to Offer Child-Only Policies

Nine states required insurers to offer child-only policies. These nine states are Arkansas, California, Colorado, Iowa, Kentucky, New Hampshire, South Dakota, Utah, and Washington (Exhibit 3). These states typically required insurers to offer child-only coverage as a condition of offering coverage in other markets in the state. California, for example, passed a law requiring all insurers in the individual market to also offer child-only coverage throughout the year.[31] Iowa issued a new regulation requiring those insurers that offered child-only policies prior to the Affordable Care Act to "offer coverage to primary subscribers under the age of 19 during the open enrollment period."[32]

To reduce the risks faced by insurers, some states restricted the time periods when insurers must offer child-only coverage. For example, Colorado and Kentucky prohibited enrollment outside of a defined open enrollment period except after special circumstances referred to as "qualifying events."[33] An open enrollment period is a limited time period when individuals can enroll in coverage (e.g., the month of June). Uniform requirements, such as open enrollment periods, can allow insurers to compete on a level playing field with a better understanding of the risks that may be involved in participating in a given market and ensure these risks are more likely to be evenly apportioned among insurers. These limitations can also help minimize the risk of adverse selection by requiring both healthy and sick children to enroll in coverage

during a limited period of time. Because a child cannot enroll outside an open enrollment period (with some exceptions in some states), it is more difficult for parents to wait until a child is sick before purchasing a child-only policy, which serves as an incentive for continuous coverage and promotes market stability.

Other states required insurers to offer child-only policies but took different approaches. Like the states discussed above, South Dakota required insurers in the individual market to offer child-only coverage during open enrollment periods.[34] But, under the state's regulations, insurers can continue to exclude benefits

Exhibit 3. State Approaches to Promote the Availability of Child-Only Policies

State	State Action to Promote the Availability of Child-Only Policies?	State Requires Insurers to Offer Child-Only Policies?	Establishes or Allows Open Enrollment Period(s)?*	Insurers Offer Child-Only Policies (as of May 2012)?
Arkansas	L, R	Yes	Yes**	Yes
California	L, G	Yes	Yes	Yes
Colorado	L, R, G	Yes	Yes**	Yes
Delaware	L	No	Yes	Yes
District of Columbia	R	No	Yes**	Yes
Illinois	R	No	Yes**	Yes
Indiana	G	No	Yes**	No***
Iowa	R	Yes	Yes**	Yes
Kentucky	O, G	Yes	Yes**	Yes
Maryland	R	No	Yes**	Yes
Missouri	G	No	Yes**	Yes
Montana	G	No	No	Yes
Nevada	R	No	Yes**	No***
New Hampshire	R, G	Yes	No	Yes
North Carolina	L	No	Yes	Yes
Ohio	R	No	Yes	No***
Oklahoma	R	No	Yes	Yes
Oregon	L, R	No	No	Yes
South Dakota	R	Yes	Yes	Yes
Texas	L	No	Yes	Yes
Utah	R	Yes	No	Yes
Virginia	L	No	Yes	Yes
Washington	L, R	Yes	Yes	Yes

L = The state passed a new law to promote the availability of child-only policies.
R = The state issued a new regulation to promote the availability of child-only policies.
O = The state issued a new order to insurers to promote the availability of child-only policies.
G = The state did not pass a new law or issue a new regulation, but issued new subregulatory guidance to promote the availability of child-only policies.
* For purposes of this analysis, a state "establishes" an open enrollment period if it specifies a time period when insurers must offer coverage (e.g., January and July). A state "allows" an open enrollment period if it has not yet specified this time period or allows an insurer to choose when to hold an open enrollment period.
** The state allows a child to enroll in child-only coverage outside an open enrollment period for certain qualifying events. These qualifying events vary by state.
*** Although the authors did not verify whether all insurers had declined to offer child-only policies, state regulators reported that no insurers were offering this coverage as of May 2012.
Notes: In Iowa, insurers are only required to offer policies during the state's open enrollment period. Montana issued a nonbinding letter to insurers allowing them to screen children for other sources of coverage before issuing a child-only policy as an alternative to ceasing to offer child-only coverage or using open enrollment periods. New Hampshire did not pass new legislation or issue a new regulation that requires insurers to offer child-only policies, but the state issued guidance that individual health insurance carriers must accept an application for any products for any New Hampshire resident regardless of that person's age. Coupled with the Affordable Care Act's requirements, a health carrier must guarantee issue any of its individual policies for an applicant under age 19. Nevada issued a temporary regulation which expired. Nevada currently has no special rules regarding child-only coverage. Texas passed a new law allowing the Department of Insurance to adopt rules to "increase the availability of coverage to children younger than 19 years of age" but new regulations have yet to be issued.
Source: Authors' analysis.

and deny coverage as they did prior to the Affordable Care Act if the child applies outside the open enrollment period.[35] Thus, South Dakota insurers are allowed to deny coverage to a sick child but accept a healthy child, so long as the application is received outside the state's open enrollment periods.[36] Although not required to do so, only one insurer is exceeding these requirements by offering coverage to all children—both healthy and sick—outside the open enrollment period. Nonetheless, South Dakota's provision appears to conflict with the federal regulations on child-only coverage.

Of the nine states that required insurers to offer child-only coverage, five had sufficient legal authority to do so without passing new legislation. These findings suggest that states may be able to use existing legal authority to fill regulatory gaps left by federal law.

States That Do Not Require Insurers to Offer Child-Only Policies

Thirteen states and the District of Columbia took action to promote the availability of child-only policies, but did not require insurers to do so. In addition to the District of Columbia, these states are Delaware, Illinois, Indiana, Maryland, Missouri, Montana, Nevada, North Carolina, Ohio, Oklahoma, Oregon, Texas, and Virginia (Exhibit 3).

With the exception of Montana and Oregon, these states established (or granted state regulators the authority to establish) open enrollment periods.

***Spotlight on the States:* Kentucky and Arkansas**

Kentucky. Following complaints about the availability of child-only coverage, the Kentucky Department of Insurance (DOI) learned that insurers had ceased to offer child-only policies. According to state regulators, these withdrawals had a domino-like effect: when one insurer ceased to offer coverage, others followed out of fear of becoming the single high-risk pool for sick kids. In response, the DOI Commissioner convened a hearing on child-only coverage and subpoenaed information from nine insurers to learn how the DOI could ensure that child-only coverage was available. Of the insurers polled, all but one supported a requirement that insurers offer child-only policies.

In November 2010, the Commissioner issued an order requiring all insurers that offer policies in the individual market in Kentucky to also offer child-only policies during an annual open enrollment period. According to regulators, the order has ensured that child-only policies are available, and 196 children and 268 children enrolled in child-only policies in 2011 and 2012, respectively. Regulators attributed this success to their strong working relationship with insurers and suggested that Kentucky's approach is worth considering in states that wish to promote access to child-only coverage.

Arkansas. After September 23, 2010, all insurers ceased to offer child-only policies in Arkansas except for Arkansas Blue Cross Blue Shield (BCBS), which voluntarily established its own open enrollment period. However, in 2011, the Arkansas Insurance Department recognized that another insurer's withdrawal from the state's individual market would disrupt coverage for at least 300 children. In response, state regulators approached the legislature with emergency legislation, Act 269, to address the availability of child-only coverage. Act 269 was sponsored by Republican legislators and passed both state chambers unanimously.

Act 269 requires all insurers to participate in an open enrollment period and directs the department to adopt rules regarding child-only policies. In August 2011, the department issued Rule 102, further defining the scope of these requirements. According to regulators, all insurers are offering child-only coverage and there have been few, if any, complaints about the availability of child-only coverage. Regulators indicated that Arkansas' efforts have been successful because of stakeholder engagement, particularly with brokers who understand their clients' need for child-only coverage, and because BCBS, the state's dominant carrier, was already offering child-only policies.

In Virginia, for example, "health carrier[s] offer[ing] individual health insurance coverage that only covers individuals under the age of 19 . . . may offer coverage continuously throughout the year or during an open enrollment period in January and July of each calendar year."[37] Indiana issued a bulletin clarifying that insurers offering child-only policies could establish open enrollment periods under certain conditions but acknowledged that "neither ACA nor Indiana law requires health insurers to offer child-only coverage."[38]

Further, some states give insurers the choice of offering child-only coverage during an open enrollment period or on a year-round basis. In five states, insurers may offer child-only coverage outside the open enrollment period only if coverage is offered year-round. These states are Delaware, Indiana, Missouri, North Carolina, and Virginia. In North Carolina, for example, insurers that decide to offer child-only coverage must do so "either continuously throughout the year or for the months of January and July of each year."[39] According to state regulators, this requirement was included because the Department of Insurance wanted to ensure that child-only policies could be available year-round should an insurer wish to offer it in that manner.[40] The law also clarified that, regardless of the option the insurer chooses—open enrollment period or year-round—they cannot deny coverage to an applicant during the open enrollment priod.[41]

Other states took different approaches. Montana, for example, gives insurers a different choice: they may either establish their own open enrollment periods or screen children for other sources of coverage, such as eligibility for the state's high risk pool, employer-sponsored insurance, or the CHIP program, before issuing a child-only policy.[42] If they establish their own open enrollment periods, they cannot screen for other sources of coverage.[43] Regulators reported that one of the two insurers offering child-only policies in Montana is not using either of these options—screening or open enrollment periods—and is simply enrolling children in coverage on a year-round basis.[44]

Spotlight on the States: District of Columbia

In response to the Affordable Care Act's new requirements, the only insurer offering child-only policies in the District of Columbia decided to cease offering such coverage. Regulators from the Department of Insurance, Securities, and Banking (DISB) then met with insurers to explore ways to make child-only coverage available. After considerable negotiation, the insurer that withdrew and a second insurer agreed to offer child-only coverage if the DISB established open enrollment periods.

In December 2010, D.C. issued an emergency regulation that establishes two annual open enrollment periods and allows insurers to deny coverage if applicants have other sources of coverage, among other requirements. This regulation was adopted in March 2011. According to regulators, the availability of child-only policies has expanded as a result of their actions and two insurers currently offer child-only coverage. Regulators credited part of D.C.'s success to the fact that Maryland had already introduced similar requirements.

In Oklahoma, the Insurance Department established an open enrollment period and prohibited insurers from offering child-only coverage outside this period except following a qualifying event.[45] Although regulators originally considered the option of requiring insurers to offer child-only coverage, legislation was not proposed in 2011.[46] Regulators instead worked extensively with insurers to encourage them to offer child-only policies.[47] Following these negotiations and a new regulation, insurers resumed offering child-only policies, but only for children ages 1 to 18.[48] The state's high-risk pool then opened its doors to children from birth to age 1. This bifurcation was designed to allow insurers to avoid covering infants up to 12 months old—children at this age range are considered high-risk because of the potential for premature birth or other complications.[49] Thus, newborn children in need of a child-only policy are enrolled in

the state's high-risk pool until they reach 12 months of age and can receive a commercial child-only policy. In 2011, only one child under the age of 12 months was enrolled in both the state's high-risk pool and the Pre-Existing Condition Insurance Plan.[50]

States That Established Reinsurance Pools

Two states, New Hampshire and Oregon, passed new legislation or issued a new regulation to establish a reinsurance mechanism for child-only coverage.[51] Both states attempted to encourage insurers to offer child-only policies through other mechanisms before using reinsurance. Oregon, for example, issued an emergency regulation to establish open enrollment periods. New Hampshire issued subregulatory guidance regarding insurers' responsibility to accept an application regardless of age which, coupled with the Affordable Care Act's requirements, requires an insurer in the individual market to issue policies for children under age 19.[52] When these initial actions proved insufficient to quell insurers' anxiety over adverse selection, both states moved ahead with further action to help ensure that child-only policies were available.[53]

Although New Hampshire and Oregon both adopted reinsurance mechanisms, their approaches differed. New Hampshire issued a new regulation that requires all insurers in the individual market to participate in the reinsurance mechanism while Oregon passed a new law followed by a new regulation that does not require insurers to participate (see box).

Reinsurance was the favored approach for both states because it is designed to stabilize premiums and reduce uncertainty by compensating insurers that incur high costs.[54] In the child-only context, these reinsurance mechanisms allow insurers that cover high-risk children to have their losses subsidized or to cede the risk of covering such a child.

Other Trends

In addition to the actions discussed previously, many states took further measures to limit adverse selection and promote the availability of child-only policies. (In some states, these requirements only apply to the extent that insurers are offering child-only coverage. Because insurers do not appear to be offering child-only policies in Indiana or Ohio, insurers may not have

***Spotlight on the States:* Oregon**

In an attempt to ward off market disruption, the Oregon Insurance Division issued a new regulation prior to September 23, 2010, to establish open enrollment periods. Although some insurers participated in the state's first open enrollment period, two discontinued offering child-only coverage and others soon followed. In response, the division worked with insurance industry stakeholders to develop a reinsurance mechanism for child-only coverage. According to regulators, insurers praised the idea and testified in favor of the reinsurance legislation, S.B. 514, which was passed with broad bipartisan support.

Under regulations implementing the Children's Reinsurance Program, insurers that choose to participate can assess a child's risk using a standardized health statement and then retain the risk of covering the child or cede that risk to the Program, which is operated by the state's high-risk pool. By ceding the risk to the Program, the insurer allows the Program to cover costs incurred for the child's care, which are funded through biannual assessments on all insurers. Even where an insurer cedes risk, the insurer continues to administer the child's policy. As a result, regulators report that the state's seven largest insurers, which control over 90 percent of the individual market, currently offer child-only policies in Oregon.

According to regulators, the Program has been successful and the state is considering expanding this mechanism to its entire market in 2014. By bringing insurers together to establish a reinsurance mechanism, Oregon helped broker an agreement that protected insurers from the risk of adverse selection and garnered critical industry support for promoting the availability of child-only policies.

to comply with these requirements.) These measures include:

- allowing insurers to restrict access to coverage or impose a surcharge consistent with the guidance issued by the federal government (seven states: Arkansas, California, Colorado, Illinois, Ohio, Oregon, and South Dakota);
- allowing insurers to deny child-only coverage if the child is eligible for other coverage, such as coverage under a parent's policy or through the state's CHIP program (10 states: Colorado, District of Columbia, Illinois, Iowa, Kentucky, Maryland, Montana, Ohio, South Dakota, and Utah);
- requiring insurers to post a notice on their Web site regarding the availability of child-only policies (14 states: Arkansas, Colorado, District of Columbia, Illinois, Indiana, Iowa, Kentucky, Maryland, Ohio, Oklahoma, South Dakota, Utah, Virginia, and Washington); and
- requiring insurers to report child-only data to state regulators (six states: California, Colorado, Kentucky, Montana, Ohio, and Oregon).

Although this study was confined to state actions between January 1, 2010, and January 1, 2012, states continued to address the availability of child-only coverage during the 2012 legislative session. Georgia, for example, passed bipartisan child-only legislation as recently as May 2012, after all insurers ceased offering child-only coverage.[55] Effective January 2013, the legislation requires insurers in the individual market to offer child-only policies during open enrollment periods and following a qualifying event; allows insurers to screen for other types of coverage; and requires insurers to submit child-only data to state regulators.[56] According to regulators, the legislation had broad support in both chambers as well as support from insurers and consumer advocacy organizations who worked collaboratively on developing the bill.[57] The Alaska legislature also passed legislation establishing a reinsurance program that would, in part, allow insurers to cede high-risk children to the state's high risk pool and could encourage insurers to offer child-only policies.[58] Actions by these two states suggest that child-only coverage will continue to be a target of legislative and regulatory action to ensure that children have access to commercial child-only policies.

POLICY IMPLICATIONS

These findings suggest that states have a variety of options open to promote the availability of child-only coverage. States that required insurers to offer child-only policies effectively met their goal of ensuring that child-only coverage was available, and efforts in Kentucky and Oregon, among other states, showed that engagement with insurers can lead to meaningful, innovative responses to market disruption. These findings also suggest that states should feel empowered to fill regulatory gaps in federal law, even if doing so exceeds the regulatory floor set by the Affordable Care Act. States can take a variety of actions to improve the availability of child-only coverage using a state-centric, flexible approach that limits adverse selection while helping children in need of health insurance.

The findings also suggest that states need to implement uniform market rules that create a level playing field among insurers. All states that required insurers to offer child-only coverage and the two states that established reinsurance pools succeeded in ensuring that child-only policies were available to the children that need them. States that have not yet taken action should consider whether such uniform market rules or other innovative measures, such as reinsurance pools, will ensure that children have access to coverage while addressing concerns about adverse selection. In addition to improving access to coverage, states should ensure that child-only coverage is affordable and comprehensive for children and their families.

Although this brief focuses on state action regarding child-only coverage, the market disruption associated with this federal requirement presents a cautionary tale for implementation of the Affordable Care Act and the broader reforms that go into effect in

2014. By directing insurers to issue coverage to any child that applied without also 1) mandating that families maintain coverage for their children, 2) providing financial subsidies to help families afford coverage for their children, and 3) establishing premium stabilization programs such as reinsurance and risk adjustment to protect those issuers that received disproportionate shares of the risk, the new federal requirements risked adverse selection in this relatively small segment of the individual market. Such adverse selection—and the risk of covering a disproportionate share of children with costly medical conditions—was sufficiently troubling to insurers to cause them to cease offering child-only policies.

At the same time, while adverse selection was sufficiently troubling to many insurers, it did not discourage all insurers from offering child-only policies. This is true even in some states where no action was taken to promote the availability of child-only coverage. A number of state regulators noted that some insurers continued to offer—or wanted to offer—child-only policies because doing so was part of their moral responsibility to enrollees and they wanted to make sure this critical source of coverage was available to families that needed it. This suggests that at least some insurers could have complied with the Affordable Care Act's new requirement but chose not to because of competitive pressures. This forced states to undertake resource-intensive efforts to ensure the availability of child-only policies and suggests that federal regulators should work closely with state officials to address similar concerns about adverse selection in implementing the Affordable Care Act.

While the experience with child-only coverage signals the need for uniform market rules and incentives to encourage insurer participation, the findings presented here also suggest that states have a range of tools at their disposal to help ensure that the Affordable Care Act's new requirements, such as accepting every individual that applies for coverage, are meaningful for consumers and that states should feel empowered to fill regulatory gaps in federal law.

CONCLUSION

Twenty-two states and the District of Columbia took action to promote the availability of child-only policies. Of these, nine states passed new legislation; 10 states and the District of Columbia adopted new regulatory requirements; and three states issued new sub-regulatory guidance. States took a variety of regulatory approaches, including requiring insurers to offer child-only policies, establishing open enrollment periods, and developing reinsurance mechanisms. As a result, most of these states have insurers offering child-only policies. These findings suggest that states have significant flexibility to adjust market rules in response to emerging issues and that there are innovative, state-based solutions to regulatory gaps at the federal level. The experience with child-only coverage also indicates that insurers are highly sensitive to the risk of adverse selection and there is a critical need for regulatory incentives to avoid adverse selection and market disruption.

Notes

1 U.S. Departments of the Treasury, Labor, and Health and Human Services, "Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections," *Federal Register,* June 28, 2010 75(123):37188, 37189, available at http://www.gpo.gov/fdsys/pkg/FR-2010-06-28/pdf/2010-15278.pdf.

2 K. Pollitz, R. Sorian, and K. Thomas, *How Accessible Is Individual Health Insurance for Consumers in Less-Than-Perfect Health?* (Menlo Park, Calif.: Henry J. Kaiser Family Foundation, June 2001), available at http://www.kff.org/insurance/upload/How-Accessible-is-Individual-Health-Insurance-for-Consumer-in-Less-Than-Perfect-Health-Report.pdf.

3 Kaiser State Health Facts, Individual Market Guaranteed Issue (Not Applicable to HIPAA Eligible Individuals) (Menlo Park, Calif.: Henry J. Kaiser Family Foundation, 2011), available at http://statehealthfacts.org/comparetable.jsp?ind=353&cat=7.

4 Georgetown University Health Policy Institute, Center for Children and Families, *Frequently Asked Questions: Enrollment in Child-Only Plans Under ACA Requirement Prohibiting Pre-Existing Condition Exclusions* (Washington, D.C.: Georgetown University, 2012), available at http://ccf.georgetown.edu/wp-content/uploads/2012/03/FAQ-on-Child-Only-Plans.pdf.

5 Personal correspondence with health insurance regulator, Oregon Insurance Division (May 22, 2012) (on file with authors); personal correspondence with health insurance regulator, Nevada Division of Insurance (May 18, 2012).

6 Although Medicaid and CHIP have been widely successful at enrolling children in coverage, millions of children nationwide are eligible for these programs but not enrolled, and families applying for commercial child-only coverage may be eligible for these public programs which often offer coverage that is more affordable and comprehensive than policies typically offered in the individual market.

7 AHIP Center for Health Policy Research, *Individual Health Insurance 2009: A Comprehensive Survey of Premiums, Availability, and Benefits* (Washington D.C.: America's Health Insurance Plans, Oct. 2009); see also *Federal Register* 75(123):37199.

8 T. S. Jost, *Health Insurance Exchanges and the Affordable Care Act: Key Policy Issues* (New York: The Commonwealth Fund, July 2010).

9 *Federal Register* 75(123):37199, 37200.

10 Of the 540,000 uninsured children with preexisting conditions, HHS estimates that up to 62,000 would gain access to child-only coverage in the individual insurance market under the new rules. According to its regulations, "acknowledging substantial uncertainty, based on the discussion above, the departments' mid-range estimate is that 50 percent of uninsured children whose parents have individual coverage will be newly insured, 15 percent of uninsured children whose parents are uninsured will be newly insured, and that very few children whose parents have ESI, are offered ESI, or who do not live with a parent will become covered as a result of these interim final regulations."

11 Health Care Cost Institute, *Children's Health Care Spending Report: 2007–2010* (Washington, D.C.: HCCI, July 2012), available at http://www.healthcostinstitute.org/childrensreport.

12 *Federal Register* 75(123):37200.

13 See 42 U.S.C. § 300gg-3(d)(2) (2006).

14 *Federal Register* 75(123):37190 (noting that the Affordable Care Act "protects individuals under age 19 with a preexisting condition from being denied coverage under a plan or health insurance coverage (through denial of enrollment or denial of specific benefits)").

15 Ibid.

16 Ibid. at 37201.

17 K. Ignagni, "Letter to Secretary Kathleen Sebelius," March 29, 2010.

[18] J. H. Tanne, "U.S. Insurance Firms Drop Child Only Health Policies," *BMJ,* Sept. 28, 2010 341:c5378; see K. Sebelius, "Letter to Jane L. Cline," Oct. 13, 2010, available at http://cciio.hhs.gov/resources/files/letter_to_j_cline.pdf (noting that "some insurers have decided to stop writing new business in the 'child-only' insurance market").

[19] N. C. Aizenman, "Major Health Insurers to Stop Offering New Child-Only Policies," *Washington Post* (Sept. 20, 2010), available at http://www.washingtonpost.com/wp-dyn/content/article/2010/09/20/AR2010092006665.html.

[20] Ibid.

[21] Ibid.

[22] Commonwealth of Kentucky Department of Insurance, *Report on Child-Only Coverage in Kentucky by the Commissioner of the Kentucky Department of Insurance* (Nov. 18, 2010).

[23] Ibid.

[24] Center for Consumer Information & Insurance Oversight, *Questions and Answers on Enrollment of Children Under 19 Under the New Policy That Prohibits Pre-Existing Condition Exclusions* (updated Oct. 13, 2010), http://cciio.hhs.gov/resources/files/factsheet.html.

[25] Ibid.

[26] For example, see Commonwealth of Kentucky Department of Insurance, *Guaranteed Issuance of Individual Health Insurance Coverage for Children Under the Age of 19 and Prohibition Against Imposing Pre-Existing Conditions* (Nov. 18, 2010); Missouri Department of Insurance, Financial Institutions and Professional Registration, Insurance Bulletin 10-06, *Open Enrollment Periods for Carriers Issuing Child-Only Policies* (Oct. 12, 2010); and S. Kliff and J. Lester Feder, "Child-Only Health Plans Endangered," *Politico* (Jan. 27, 2011).

[27] Federal Register 75(123):37189 (noting that "State laws that impose on health insurance issuers requirements that are stricter than the requirements imposed by the Affordable Care Act will not be superseded by the Affordable Care Act").

[28] K. Keith, K. W. Lucia, and S. Corlette, *Implementing the Affordable Care Act: State Action on Early Market Reforms* (New York: The Commonwealth Fund, March 2012).

[29] Sebelius, "Letter to Jane L. Cline," 2010.

[30] 2011 Kansas H.B. 2075 (May 25, 2011); and T. Coughlin, K. Keith, and K. W. Lucia, *ACA Implementation—Monitoring and Tracking: New Mexico Site Visit Report* (forthcoming 2012).

[31] 2010 California A.B. 2244 (Sept. 30, 2010).

[32] Iowa Admin. Code r. § 191-36.13 (513C,514D).

[33] 3 Colorado Code § 4-2-33(5)(A); Commonwealth of Kentucky Department of Insurance, *Guaranteed Issuance of Individual Health Insurance Coverage for Children Under the Age of 19 and Prohibition Against Imposing Pre-Existing Conditions*, 2010.

[34] Admin. R. South Dakota § 20:06:55:25. This coverage includes "coverage under a group health plan or other creditable coverage" where "creditable coverage does not include a high risk pool, an individual benefit plan with exclusionary riders, Medicaid, CHIP, or a plan providing less than basic benefits."

[35] Ibid.

[36] Ibid.

[37] Virginia Code Ann. § 38.2-3444.

[38] Indiana Department of Insurance, Bulletin 181, *Open Enrollment Period for Children Under Age 19* (Sept. 22, 2010).

[39] North Carolina Gen. Stat. § 58-3-285.

[40] Personal correspondence with health insurance regulator, North Carolina Department of Insurance (June 28, 2012) (on file with authors).

[41] Ibid.

[42] M. J. Lindeen, "Letter to Insurers," Jan. 7, 2011 (on file with authors).

[43] Personal correspondence with health insurance regulator, Montana Office of the Commissioner of Securities and Insurance (June 15, 2012) (on file with authors).

[44] Ibid.

[45] Oklahoma Admin. Code § 365:10-1-15(c)(1)(B).

[46] Personal correspondence with health insurance regulator, Oklahoma Insurance Department (June 4, 2012) (on file with authors).

[47] Ibid.

[48] Ibid.

[49] Ibid.

[50] Ibid.

[51] 2011 Oregon S.B. 514 (May 23, 2011); Oregon Admin. R. 836-100-0011; New Hampshire Code Admin. § 1908.01 et seq.

[52] Oregon Admin. R. 836-100-0010, -0015; New Hampshire Bulletin INS No. 10-041-AB (Sept. 23, 2010).

[53] Personal correspondence with health insurance regulator, Oregon Insurance Division (May 22, 2012) (on file with authors); personal correspondence with health insurance regulator, New Hampshire Insurance Department (June 5, 2012).

[54] "Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment," *Federal Register,* March 23, 2012 77(57):17220, 17221.

[55] 2011 Georgia H.B. 1166 (May 1, 2012).

[56] Ibid.

[57] Personal correspondence with health insurance regulator, Georgia Insurance and Safety Fire Commissioner (May 23, 2012) (on file with authors).

[58] 2011 Alaska H.B. 218 (2012).

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