

Using Rate Review to Make Health Insurance More Affordable

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Health insurers are typically required to file their proposed rates for individual and small-group health plans with state regulators every year. These rates form the basis of premiums that consumers and businesses will be asked to pay. Rate review is a mechanism that gives state regulators the opportunity to review, and in some cases, disapprove or modify, proposed health insurance rate increases. By examining and constraining costs in the commercial market, rate review is an essential component of states' comprehensive oversight of health care costs.

The Affordable Care Act (ACA) built on states' existing authority to conduct rate review by providing grants to strengthen their rate review processes. It also required states either to be recognized as operating "effective" rate review programs or to default to a federal process. The ACA-mandated [rate review process](#) requires insurance carriers to file and publicly justify the reasonableness of proposed rate increases in the individual and small-group market over a certain threshold (currently 15%).

States have additional statutory and regulatory authority to regulate health insurance rates, to varying degrees. And some states have been particularly noteworthy in using their regulatory authority to advance rate review policies to achieve more affordable health coverage for consumers and businesses. For example, **Rhode Island's** health insurance commissioner is directed to "view the health care system as a comprehensive entity and encourage and direct insurers toward policies that advance the welfare of the public through overall efficiency, improved health care quality, and appropriate access" (R.I. Gen. Laws § 42-14.5-2). This has led the state to create a set of affordability standards that advance the adoption of alternative payment models, price growth caps, and other strategies to encourage value-based health care and control costs.

Stronger rate review authority — specifically, prior approval authority that requires rates to be approved in advance by regulators — has been [associated with lower premiums](#) in the individual market.

The following steps present a sequence of important decisions states must work through. States should be prepared for a process that is both *iterative*, where questions may need to be revisited over time, and *dynamic*, to account for new questions and answers that may emerge.

- Step 1.** Establish goals for strengthening rate review policies and confirm readiness to proceed.
- Step 2.** Assess whether additional statutory authority for rate review is desired or needed.
- Step 3.** Consider opportunities to use the rate filing and review processes to support affordability efforts within existing authority.
- Step 4.** Consider opportunities to align the rate filing and review processes to support the state's broader affordability and cost growth mitigation strategies.
- Step 5.** Promote public education and transparency about health insurance rates.
- Step 6.** Engage stakeholders in the effort, including insurers and executive and legislative branch leadership.
- Step 7.** Design, implement, monitor, and evaluate the program with equity at the center.
- Step 8.** Monitor and evaluate the program's impact.

Step 1. Establish goals for strengthening rate review policies and confirm readiness to proceed.

Goal development. A clearly articulated and widely supported set of goals will provide policymakers, regulators, and stakeholders with clarity on what the state aims to achieve. The goal definition process should involve all of the key state agencies, as collaboration across state agencies and with the legislature is important for success. This can be performed with all actors assembled or through a series of individual conversations.

The primary goal for strengthening rate review is to make health insurance that consumers and businesses purchase more affordable, by lowering proposed rate increases but strong rate review programs can also support broader cost containment goals that extend beyond the plans that are being regulated.

- States have used their rate filing process to collect information from insurers about their progress in adopting cost containment and quality measures as part of a broader strategy to influence cost and quality across the market as a whole. Rate review programs can also play an important role in educating the public about health insurance and health care costs. For example, it can help consumers make better-informed decisions, including by explaining why higher-cost care does not equal higher-quality care.
- Rate review can make health care pricing more transparent by requiring insurers to explain how rates were derived and providing information about key cost drivers. In pursuit of this goal, states may be able to build on [new federal requirements](#) for health plans to post their negotiated rates for all items and services.

Environmental assessment. Each state's environment is unique and will change over time. An environmental scan can help identify the state's needs in terms of regulatory capacity and legislative authority, and it helps states gain a better understanding of their health care markets and how they operate.

This scan should assess market competitiveness (how many issuers and how many hospitals and health systems there are); the primary drivers of rate increases currently and trends over time; and possible issues with adverse selection, particularly in the group market with the rise

of level-funded plans and association health plans.¹ This context can help the state design an approach to rate review that comports with a more comprehensive strategy for addressing health care cost growth.

The state should also consider these questions regarding the stakeholder environment:

- Is there sufficient state government leadership support within the governor's office and across state agency leadership, and legislative leadership?
- Are key external stakeholders willing and able to collaborate?
- Are there sufficient resources inside and outside the state to provide the necessary staff and financial support?

Each state should perform an environmental assessment at the outset to understand the perspectives of key stakeholders and determine where there may be opportunities and barriers. First, the state should identify whether there is requisite state leadership to champion stronger rate review policies. Part of this step includes building the case for stronger rate-review authorities and processes. For example, a state could identify examples of past rate increases that insurance regulators did not have the authority or ability to reject, or it could project potential consumer savings under the proposed program.

Next, conversations with key stakeholders and other knowledgeable parties can be valuable in gauging external stakeholder support and readiness. State staff should consider the perspectives of a variety of stakeholders, including:

- consumer advocates and community organizations
- labor
- employer purchasers
- insurers
- provider organizations

¹ Level-funded arrangements are nominally self-funded options that package together a self-funded plan with extensive stop-loss coverage, which significantly reduces the employer's risk. These plans may be attractive to small employers that might otherwise be unable to self-insure.

- legislators
- state agencies.

Finally, states should evaluate the availability of financial and personnel resources (including contracted personnel) that will be needed to support this work. If resources are not already in place, the state should assess the likelihood that it can obtain those resources.

Step 2. Assess whether additional statutory authority for rate review is desired or needed.

Rate review authority varies significantly across states. States should review the authorities they have to see if they are being fully utilized. They may find that there are opportunities to exercise existing authorities more fully. In addition, states may want to seek additional legislative authority, a process that will require working with stakeholders and that may be more difficult in some states than others. Following are some of the features the state should examine.

Type of review authority. Until the mid-1990s, most states required insurance commissioners to conduct a robust review of rates to ensure that they did not increase faster than medical costs. These laws and practices

were gradually rolled back in many states because of a deregulatory wave and insurance industry complaints that the review process was too slow and burdensome. After this period, regulation of health insurance [varied dramatically from state to state](#), and even within a state, by type of market and type of product.

Currently, the strongest legislative authority allows insurance commissioners to approve, modify, or disapprove proposed rates. States interested in using rate review as a tool to make insurance more affordable should seek this type of clear authority. **New York, Rhode Island, and Oregon** are examples of states that have the authority to approve, modify, or disapprove rates. The **Massachusetts** Division of Insurance has the authority to approve and disapprove rates, and last year the governor [proposed legislation](#) that would give the insurance commissioner the authority to also modify rates.

The table below shows different types of rate review authority, from the weakest to the strongest. Having stronger rate review authority (specifically, prior approval authority that requires rates to be approved in advance by regulators) has been [associated with lower premiums](#) in the individual market.

Types of State Rate Review Authority

Authority	Description
None	In some states and in some markets, rates are not required to be filed or reviewed at all.
Actuarial certification	Carriers file a certification attesting that their rates comply with state law without providing any underlying documentation.
File and use	Rates and underlying actuarial justifications are filed and go into effect without review after a defined period of time. States may be able to take action later if they find that rates are unreasonable.
Prior approval	Rates must be approved before they go into effect.
Prior approval with ability to approve, disapprove, or modify rates	The insurance commissioner can approve, disapprove, or modify rates.

States may institute additional requirements for reviewing, approving, disapproving, and modifying rates. In particular, public hearings can draw public attention to proposed rates and thereby encourage carriers to lower their rates (see Step 5 on page 6).

Markets subject to review. Some states' authority is limited to certain types of health insurers, for example, nonprofit "Blues" plans or health maintenance organizations (HMOs). These states should expand their authority so they can review rates for all types of carriers.

Many states have limited the rate review process to the individual and small-group market, perhaps because they assume that large employers are better positioned to negotiate on their own behalf. However, the large-group, fully insured market makes up a substantial proportion of covered lives in that market and still faces substantial rate increases. Thus, states may want to pursue the authority to review large-group rates as well to provide oversight of rates across all fully insured segments of the market.

California and **Rhode Island** are examples of states that review rates for individual, small-group, and large-group policies. To succeed, states will need sufficient staff resources to carry out these reviews. States will also need to balance the desire for oversight with the concern of adding further incentive for the market to move toward self-insurance.

Authority to improve affordability. When examining their existing authority, states should consider the language relating to the insurance commissioner's general authority, as well as language specific to the standards for review. States may be able to rely on general office authority that allows, or compels, the commissioner to act in the public interest or promote affordability.

Ideally, to maximize the effectiveness of rate review as a tool to increase affordability, a state's rate review statute should give the insurance commissioner the authority to specifically include affordability and related factors in its standards for rate review. This goes beyond the typical statutory standard for rate review, which requires that rates not be "excessive, inadequate or unfairly discriminatory."² Some states can also consider whether benefits are not reasonable in relation to the premiums charged. States may also need clear authority to require submission and to allow the insurance department to review contracts and other relevant documents. **Rhode Island** and **Washington** are two examples of states that have this authority, but most states do not. Rhode Island's law, and the [NASHP model legislation](#) based on Rhode Island's model, included language referencing affordability and the public interest.

² This language is common across many states, as it reflects language in the Commissioners All Industry model bills enacted in many states following the McCarran-Ferguson Act of 1945. These model bills included the core requirement that "rates shall not be excessive, inadequate or unfairly discriminatory." See Hanson, Dineen, and Johnson, *Monitoring Competition: A Means of Regulating the Property and Liability Insurance Business*, National Association of Insurance Commissioners (1974), pp. 30–31.

Colorado's Primary Care Investment Law

In 2019, the Colorado legislature passed a primary care investment law ([HB19-1233](#)) that required the insurance commissioner to "encourage and direct health insurers toward policies that advance the welfare of the public through overall efficiency, affordability, improved health care quality, and appropriate access" (Section 3). The law also allows the commissioner to consider, in determining if rates are excessive, "whether the carrier's products are affordable, and whether the carrier has implemented effective strategies to enhance the affordability of its products" (Section 4).

Timeline for review. Some state rate review processes are set up so that rates automatically go into effect after a defined period, which can be as short as 30 to 60 days. Short timelines can make it difficult for states to sufficiently review submitted materials and take into account stakeholder feedback, particularly if they have a large number of carriers in their market.

States should ensure that they have adequate time to review filings, which could mean a 90-to-120-day review period. In 2019, when **California** passed a bill ([AB 731](#)) that added certain filing requirements to the large group market, it also implemented a 120-day notice period for rate filings. If rate filing cycles are not yet annualized (for example, **Massachusetts** has quarterly filings and last year proposed [moving to annual filings](#)), states may consider putting rate filings on an annual cycle, which could facilitate public awareness of and participation in the review process.

Funding for review. States need robust staffing and strong leadership to ensure appropriate oversight of rates and affordability. Ensuring secure and sustainable funding over time is critical to the strength of the rate review function. States may consider using a model where regulated entities pay an assessment or user fee to support the cost of reviews. For example, **California's** Department of Managed Health Care is [fully funded](#) through fees paid by the insurers that it regulates. Many states also allow the insurance commissioner to undertake market conduct examinations and charge the costs of the examination to the regulated entity.

When securing funding, states should keep in mind the need for actuarial expertise. This expertise is essential for designing standard questions and templates for rate filings and examining carrier submissions. States should especially consider how they will secure sustainable funding for actuarial support, whether on staff or contracted. For example, states may want to assess carriers for the actuarial services used by the agency, either as an annual assessment based on a percentage of written premiums or for hourly or contracted services specific to the cost of a review.

In addition to technical staff, states will need staff to manage stakeholder relationships, public education, and outreach initiatives. The ability to communicate with a lay audience about technical issues is essential for a program's role in promoting transparency and awareness of health care affordability issues. So, agencies should consider how they will obtain engagement and communications expertise if they do not have it on staff.

Dedicated agency for health insurance oversight. States' health insurance oversight functions can reside in different sectors of state government and will vary in how they coordinate with state health departments and other relevant agencies. Given the complexities involved in regulating health insurance specifically, states may consider whether they need dedicated resources for health insurance, apart from other types of insurance (such as property insurance), to strengthen their oversight capacity.

In 2004, **Rhode Island** created the Office of the Health Insurance Commissioner, the state's commercial health insurance policy reform and regulatory enforcement agency. This office has a broad charge to protect the public interest and improve the health care system as a whole, in addition to carrying out the typical responsibilities related to consumer protection and insurer solvency.

Step 3. Consider opportunities to use the rate filing and review processes to support affordability efforts within existing authority.

States vary in the rigor and thoroughness they bring to the rate review process, depending on staff motivation, resources, and capacity. Research suggests that states may be able to expand their influence over the affordability of health insurance rates and achieve meaningful rate reductions by [engaging with carriers](#), even in the absence of explicit statutory authority.

For example, states can request more detailed information about the assumptions insurers base their rates on.

Oregon uses [standard review questions](#) to probe the contribution of specific cost drivers, as well as areas where savings are expected. In the past, this has enabled the state to calculate the average cost of paying claims in prior years and to require plans to justify any variance from those averages in their rate filings.

Rhode Island's rate filing template requests unit cost (price) and utilization trends separately, by service category, as well as a detailed breakdown of how different categories of administrative costs are contributing to rate increases.

States can also use their rate review process to support aligned initiatives, as discussed in Step 4.

Step 4. Consider opportunities to align the rate filing and review processes to support the state's broader affordability and cost growth mitigation strategies.

States should consider how they can use their rate review process to support related affordability strategies. **Rhode Island** and **Delaware** have both used their rate review processes to advance broader affordability goals, including goals related to alternative payments, primary care spending, and [provider price growth caps](#), by requiring carriers to provide information on progress toward these goals. Several other states use their rate review process to collect information about strategies that insurers are implementing related to affordability. For example, **California's** rate review process requests information from insurers about their cost containment and quality initiatives. **Oregon's** standard review questions do the same.

States may consider requesting information about provider prices and price variation during rate review. In the past, this may have depended on the authority granted to a state's insurance commissioner. But new federal requirements for plans to report payer-specific negotiated rates could be a game changer — if the data are posted in a way that is actionable and accessible, and if insurance departments have sufficient staffing resources to examine and mine the data.

The ability to review and approve provider contracts is another powerful tool states can use if they are able to secure the authority to do so. The ability to review

contracts would give state regulators greater insight into current marketplace practices and help regulators identify and potentially prohibit anticompetitive contract language, such as anti-steering or all-or-nothing provisions.

A final consideration for states that are seeking stronger statutory authority is whether they want to tie rate review more explicitly to rate setting strategies. The **Colorado law that created the state's public option** established premium-reduction targets that Colorado Option plans must meet, reaching 15 percent by 2025 (adjusted for inflation). If plans do not meet the targets, the insurance commissioner can establish rates and require providers to accept them. States interested in a bold and muscular approach could employ this technique of using rate-setting as a backstop should rate review not achieve desired cost containment goals.

Step 5. Promote public education and transparency about health insurance rates.

Prior to passage of the Affordable Care Act (ACA), relatively few states took steps to make rate filings transparent or to facilitate consumer access to information about rate increases. After the ACA was passed, several states increased transparency and public access. Many states now post rate filings on their websites. Some states also require insurers to notify enrollees of proposed rate increases, provide consumers with the opportunity to comment on proposed rate increases, and hold public hearings during which insurers are required to justify their proposed increases.

States should also prohibit insurers from redacting their rate filings on the basis that they contain proprietary information or trade secrets. These redactions can make it difficult, if not impossible, for consumers or other stakeholders to assess what is being proposed and why. This undermines transparency, public engagement, and the rate review process itself.

Finally, states should extend their public education and transparency efforts to include the drivers of health care costs. This requires insurance departments to examine the role of provider prices. States should consider highlighting high-cost providers or other trends that are increasing costs, including through reports and public hearings.

Even with this increased access, it can be difficult for consumers to understand and engage with the process.

Transparency in Iowa and Oregon

Iowa's Insurance Division requires carriers to **immediately notify policyholders** of any application for a rate increase that exceeds average annual health spending growth (based on national health expenditure projections). The insurance commissioner is required to **hold a public hearing** on such proposed rates prior to approval or disapproval. And the consumer advocacy officer is required to solicit public comments on these rate increases, which are posted on the insurance division's website and presented by the advocate at the public hearing.

Oregon's Division of Financial Regulation posts all rate filings and correspondence on its website, including questions and challenges that have arisen between insurance companies and the division. The division also holds public conference calls to discuss filings, and it holds hearings at which each insurance company **presents its rate requests**, answers questions from the division, and hears public comments.

To help the public better understand these decisions, **Washington** prepares decision memo summaries that are short and written in plain language. **Oregon** includes helpful information on its website about the rate review process and terminology.

Step 6. Engage stakeholders, including insurers and executive and legislative branch leadership, in the effort.

To facilitate their work with insurers, insurance departments can provide routine communication and working groups, as well as opportunities for insurers to review and ask questions about submission templates and related information. Some states have regular (sometimes monthly) meetings with insurers to share information. Other states make time to meet with insurers one-on-one. These meetings allow for necessary communication while preserving enough distance to ensure the independence of the oversight function.

Engaging stakeholders to inform policy and practice is important for gaining buy-in and trust. **Rhode Island's** extensive stakeholder engagement process, including advisory committees and regular public meetings over a period of many years, is also notable for its breadth, depth, and durability.

States should also consider developing an advisory structure for the rate review process that includes the constituencies affected by rate increases, such as consumers and employers. These constituencies are important for reminding policymakers and stakeholders about the importance of affordable health insurance and what it means to families and small businesses. States will need to plan how to support community participation, including staffing and perhaps providing stipends or other supports.

Cultivating legislative champions through outreach, regular briefings, and communication of the program's impact on consumers is essential for long-term success. Given that flexing regulatory muscle through the rate review process is likely to raise the concerns of carriers at some point, it is also important to build support within the executive branch as a whole. This helps ensure an understanding of the program's goals and activities at the highest levels of leadership.

Step 7. Design, implement, monitor, and evaluate the program with equity at the center.

There are many opportunities to address health equity in the context of a rate review program. For example, states can examine how cost and quality initiatives undertaken by insurers advance health equity goals.

Equity should also be a core focus of public and stakeholder engagement efforts. States should proactively reach out to diverse communities that have historically been excluded. It is important to educate these communities about how rate review efforts help them, ensure that information and meetings are accessible, and support participation and engagement in the rate review process.

The state's approach to monitoring program impacts should also focus on equity as a key objective. States should:

- scrutinize plan design and the impact of high out-of-pocket costs on low-income people
- examine disparities in access to affordable health coverage
- work with the most affected communities to develop policy solutions that mitigate those disparities.

Step 8. Plan to monitor and evaluate the program's effects.

States should be prepared to monitor and evaluate their programs for both positive and negative effects. One potential concern is that health plans could exit the market. States should therefore monitor the availability of insurance offerings in each geographic region to ensure that the market is competitive and there are sufficient consumer options in all regions.

Because rate review creates downward pressure on rates, states should be alert for negative impacts on consumers, such as concerns about access to care and member experience. This could include monitoring insurer networks, appeals and grievances, and health plan performance on quality and patient experience measures. To detect inequities, these monitoring approaches should foster examination of results stratified by race, ethnicity, income, geography, and other demographic factors. States should also monitor for how insurers might game the system.

Perhaps most important is that states attend to the impact that rate review has on affordability. Estimating the dollars saved through rate review can be a helpful statistic to use when speaking with legislators and other stakeholders about the program. States should also be mindful of consumer out-of-pocket spending and its impact on affordability.

In addition to routine monitoring, states could conduct more formal evaluations to understand the effects of the program. **Vermont**, for example, commissioned an evaluation that [estimated savings generated from rate review](#).

Conclusion

Strengthening rate review focuses on improving and optimizing an existing function of state government. Rate review presents multiple opportunities to make an impact, whether it is incremental change within existing statutory authorities or more sweeping statutory changes. As with many of these strategies, ensuring sustainable funding and building strong leadership are essential for impact. When properly implemented, rate review epitomizes the essential function of government in ensuring a well-functioning market that operates in the service of consumers.

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