How to Stop Insurer Price Gouging

BY **PETER HARBAGE**

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In the context of legislation that would cost nearly a trillion dollars, it's easy to overlook a provision that, on its own, would cost a mere billion. But one such provision in the House bill could make a huge difference in the success of reform--if House-Senate negotiators put it in the final package and especially if, upon doing so, they make it even stronger.

The provision, Section 104 of the House bill, would make $1 billion available to states in order to monitor possible insurer price gouging during the transition to health reform. The idea, in a nutshell, is to provide states with resources to review premium increases in the next few years--and to make recommendations on whether or not price gouging has occurred.

The Senate bill has no corresponding section. But it really should. Health insurance premiums can increase by double digits year after year, with small businesses taking the hardest hits. Insurers could use health reform as an excuse to force even bigger increases, enlarging profits and discrediting health reform in the process. As one of the "immediate reforms" under the House bill, the provision's success or failure would help set the tone for how people see health reform in 2010.

But it's not enough for the federal government simply to make the money available. The bill must make sure the funds are used effectively.

States vary greatly in quality of insurance regulation and, in many cases, they just aren't very effective. (It's even more true in times of tight budgets, like these.) A 2008 Congressional hearing and a recent Robert Wood Johnson Foundation paper that I co-authored show that insurers can still conduct illegal rescissions, even ten years after federal law set clear limitations on such practices. At a 2009 hearing, major insurers said that they do not follow federal standards and instead follow state laws that offer weaker consumer protections. All too often, state regulators

lack basic market information to even identify if there is a problem for consumers.

With the $1 billion in funding the House bill makes available, states can--and must--do more than just make recommendations on price gouging. As a condition for accepting funding, the federal government should require states to:

1. Audit insurers to prove that they follow federal consumer protection standards,
2. Support consumer education on insurance rights and how those rules are changing,
3. Review the math on insurer medical loss ratios and premium calculations, and
4. Build needed systems to coordinate regulations with the new exchanges.

If adding those requirements is too big a lift at this stage in the legislative process, lawmakers should at least strengthen the existing House language in a couple of ways. For example, the law should provide a definition of “price gouging” and establish penalties for it, exlcuding insurers from the exchanges altogether if they are guilty of it. (Few state regulators will have the tenacity to do this on their own.) And to make sure that states act, the feds should consider a stick to go with their $1 billion carrot--for example, limiting state Medicaid payments to states that fail to take steps on insurance regulation.