

Mandated Benefits

Tom Miller

Cato Institute

FTC/DOJ Health Care Hearings

June 25, 2003

Scope & Scale of State-Mandated Health Benefits

Lewin Group, for BCBSA, October 2002

1970-1996: Average annual growth rate **exceeded 15 percent**

Jensen and Morrissey, *The Milbank Quarterly*. 1999

Approximately **1500** State and Federal Mandates

PricewaterhouseCoopers, AAHP, April 2002

“Process” Mandates, too

Patients rights, any willing provider

Variation Across States

28 benefits – Maryland; 5 benefits – Hawaii

BCBSA, December 2001

Common State-Mandated Benefits

Cancer Screening

Breast Cancer (50 states)

Prostate Cancer (26 states)

Cervical Cancer (25 states)

Colorectal Cancer (12 states)

Mental Health Parity (34 states)

Diabetes Education & Supplies (47 states)

Recent State-Level Trends

2000

Blue Cross Blue Shield Association's Office of
Policy and Representation

<http://bcbshealthissues.com/research/state/fullpdf.pdf>

- Proliferation is slowing, if not abating
- Mental Health Parity
- Coverage for Clinical Trials

Coverage for Clinical Trials.

Mandate to pay for routine patient care costs
incurred in clinical trials (Even if govt has not vet

Mental Health Parity

State Level

Require covering treatment of mental illness on equivalent or parity basis with physical illness.

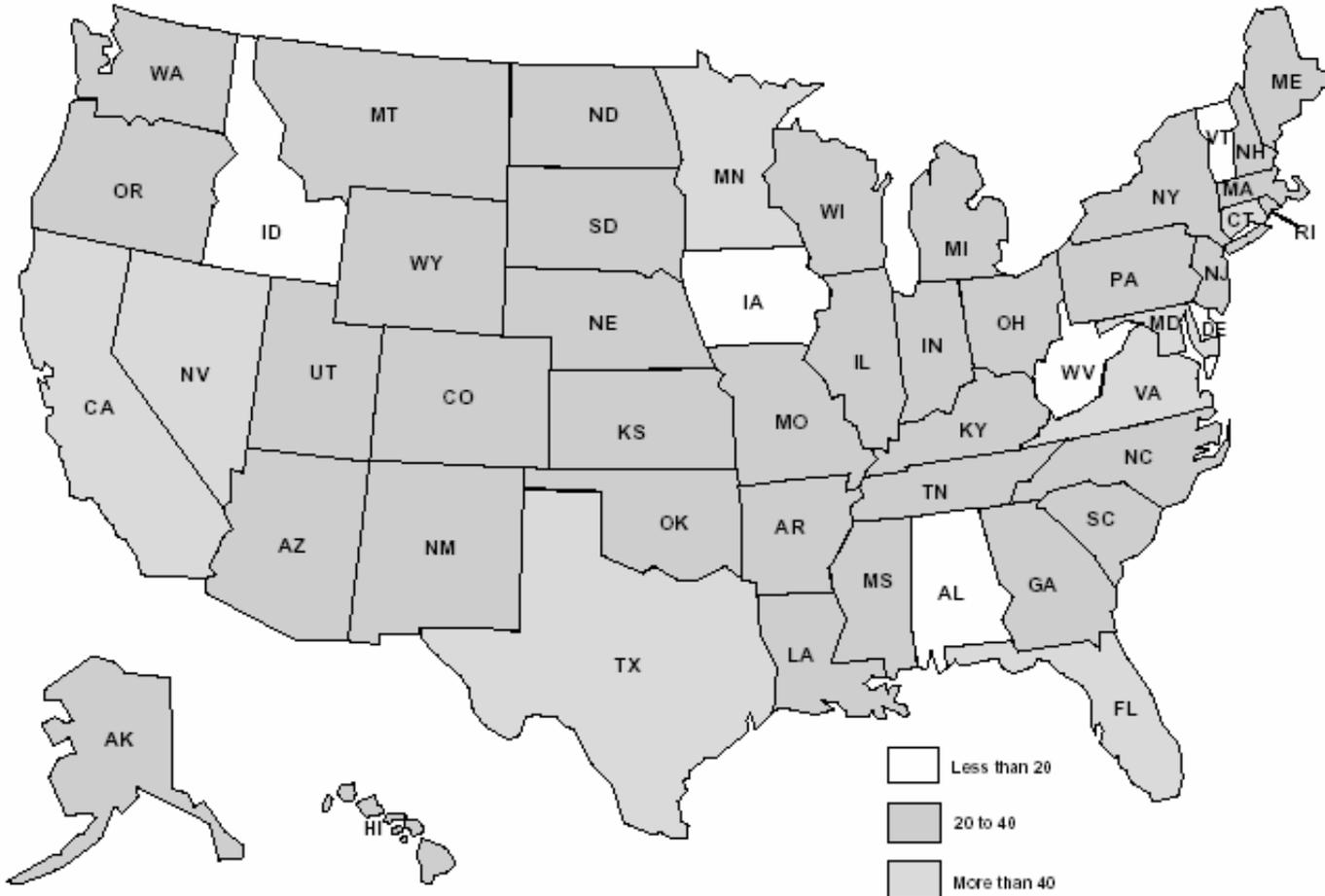
Defeated in 15 states and enacted in 5 states.

29 states total (as of Dec 2000)

Limitations:

- Biologically-based illnesses
- Catastrophic coverage only
- Certain individuals or employer groups exempt
- Opt out if insurance costs increase more than a small percentage

PROLIFERATION OF STATE MANDATED BENEFIT LAWS



Source: Blue Cross and Blue Shield Association, December 2000

716 State-Mandated Benefits

	AL	AK	AZ	AR	CA	CO	CT	DC	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	
BENEFITS																					
Alcoholism Treatment	79	88		87	88	76	74	90		83	75	98	82				86	78	80	74	
Ambulance Transportation							83			83										80	
Ambulatory Surgery			71	81						77		74							78		
Blood Lead Screening					91				95												
Bone Marrow Transplants										92	95								96		
Bone Density Screening											98								98		
Breast Reconstruction	98	98	81	97	98	98	98	98	98	97	98	98	98	80	97	98	98	98	97	97	
Cervical Cancer Screening		96			90			90	oo		92			97						91	96
Cleft Palate						87				98			85	85						89	
Clinical Trials			oo				99				98			99						99	oo
Contraceptives					99		99		oo		99	99				oo					99
Dental Anesthesia					98	98	99			98	99				99	oo	99			97	
Diabetic Supplies / Edu		oo	98	97	99	98	99		oo	95	98	oo		98	97	99	98	98	97	96	
Drug Abuse Treatment	79	88		87	88		90	90		83	75	98						86		80	83
Emergency Services			96	95	95	97	97	98	98	96	96	98	97	99	98	99	97	98	97		
Formula for PKU		92	oo	99	99		97			95		99							oo	95	
Hair Protheses (Wigs)																					
Home Health Care			82		78	84	75			87									82	77	
Hospice Care				99		84															
Invitro Fertilization				87			89					87	91								
Other Infertility Services					89					94											
Long Term Care																				86	
Mammography Screening	97	91	88	89	87	89	88	90	93	88	92	99	92	89	99	89	88	oo	91	90	
Maternity					76	89					78	74					79			75	
Mental Health (General)	oo			83	92*	76	90	90		83	84	98	77				86	86	75	93	
Mental Health (Parity)				97	99	97	99		98		98	99			99				oo	99	95
Minimum Mastectomy Stay				97	98		97			97	99			97						98	97
Minimum Maternity Stay	96	96	97	97	97	97	96	96	97	96	96	97	97	96	96	96	96	96	96	97	96
Off-Label Drug Use	94		oo	99	92		94			95	93			92	93		99	98	97	98	
Orthotics/Prosthetics					85	oo	87			87											
Prostate Cancer Screening		oo			98	95	99		92		92			97	99		98			97	98
Rehabilitation Services							82													90	87
Second Med/Surg Opinion					99																
TMJ Disorders										96	94			94						90	
Well-Child Care				95	92	95	89	92		oo	95	88			99	93	95			92	
TOTAL	7	9	10	16	23	16	22	9	10	21	21	15	5	14	11	8	13	17	18	18	

Notes: The date refers to year enacted or significantly revised. Mandated offerings are shaded.

Mandates that do not apply to BCBS Plans are asterisked. Includes federal mandates for maternity stay (1996)and breast reconstruction (1998).

MD	MA	MI	MN	MS	MO	MT
88	73	82	82	74	91	79
				79		
			76		81	
	88					
	94		95		95	
97						
96	98	85	80	98	97	97
	87		88		99	
98			88			
99						
98						
98			95	99	98	
97	00		97	98		
88		82	82		91	81
96	00	98			97	
95	94		85		97	89
00	98		87			
82	86					81
82		84				
00	87					
						95
91	87	89	88	98	90	91
75	85		73		73	
93	00		87	91	91	81
94	00		94		97	99
99					97	97
96	95	97	96	97	96	97
94	92		98	91		
99		85				
					99	
00	86					
85					98	
			87	91		
99	88		88	98	99	91
26	19	8	19	11	18	12

	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT
BENEFITS																			
Alcoholism Treatment	80	83		77	83	83	84	89	78		87	86	80	94	79	82	89	86	85
Ambulance Transportation		89								84									
Ambulatory Surgery										76									
Blood Lead Screening				95								91							
Bone Marrow Transplants			92	95												98			
Bone Density Screening					97	99				96				98		96	95		
Breast Reconstruction	98	83	97	97	98	97	97	98	98	97	98	97	96	98	98	97	97	98	98
Cervical Cancer Screening		89			92	92	91		92		93	94	88	98		99			
Cleft Palate						92													
Clinical Trials			oo									94							
Contraceptives		99	99			99						oo							99
Dental Anesthesia			98	99			99	99		98					99				
Diabetic Supplies / Edu	99	97	97	95	97	93	97			96	87	98	96	99	99	97	97	oo	97
Drug Abuse Treatment		83			83	87	84	89			87	89	87	94		82	89	86	
Emergency Services	97	97	97	97	97	96	97	99	97	97	97	98		98	99	98	97	oo	97
Formula for PKU		97	95	97		93		97				96			92	96	89	98	98
Hair Protheses (Wigs)			92							oo									
Home Health Care		89		77	84	75							84*				87		76
Hospice Care		89				85													
Invitro Fertilization													91				87		
Other Infertility Services					94	94													
Long Term Care											87								
Mammography Screening	95	89	88	91	90	89	91	89	92	89	93	92	88	98	91	89	87		91
Maternity					84						99								
Mental Health (General)		99	83			77		99	83		87	98		94		98	91	oo	76
Mental Health (Parity)	99		94	99	oo					99			94		98	98	97	oo	97
Minimum Mastectomy Stay				97	97	97	97			97		97	97	98			97		
Minimum Maternity Stay	97	97	96	95	95	96	95	97	96	96	97	96	96	96	96	96	97	97	97
Off-Label Drug Use	98	99	99	94		90	93		94	93			94	96	oo	97	99		
Orthotics/Prosthetics											81								
Prostate Cancer Screening				96			93	97		99			oo	98		97	97		
Rehabilitation Services																			
Second Med/Surg Opinion				79		76							83*						
TMJ Disorders	98	89			89		95	89									89		98
Well-Child Care	94				97	93			93	94		92	88				99	85	
TOTAL	10	16	14	16	16	17	16	11	9	15	12	12	18	13	10	15	18	10	12

Notes: The date refers to year enacted or significantly revised. Mandated offerings are shaded.

Mandates that do not apply to BCBS Plans are asterisked. Includes federal mandates for maternity stay (1996)and breast reconstruction (1998).

VA	WA	WV	WI	WY	TOTAL
93	87	82	88	97	44
					6
					8
					5
94					10
					9
98	85	98	97	98	51
96					22
					8
99					10
97					14
00			97		21
00		96	84		41
97	87		88		32
97	97	98	98		43
	88				26
					5
	83		78		19
99	83				8
					8
		93			6
		86			3
96	89	89	90		49
	00				13
97	83	90	88		36
99					28
98					21
96	96	97	97	97	51
97					31
					7
98					21
		90			6
			98		7
95	89	89	97		17
00		94	00		30
20	12	12	13	3	716

687 Provider & Persons Covered Mandates

	AL	AK	AZ	AR	CA	CO	CT	DC	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA
PROVIDERS																			
Acupuncturists					84					89									
Chiropractors	75	83	00	75	76		89	93	86	80			82	90	86	73	86	75	
Dentists	75	92	89	79	76		75		86	74				74	88	73			89
Dieticians																			
Licensed Health Profs				75									82	85					
Marriage Therapists							92		92										
Massage Therapists									99										
Naturopaths		87																	
Nurses						90									89				
Nurse Midwives		83	85		91	90	84		88	83									84
Nurse Anesthetists			85	93		90								95		90			
Nurse Practitioners		88	85		91	90	84		90						96	90			
Nurse, Psychiatric					82	90	84			83									
Occupational Therapists		87			78		82			87									90
Optometrists	67	92	77	93	80		75	65*	89	88			80	74	83	73			
Oral Surgeons									87					82					
Osteopaths		83		75					87					82	85				
Pastoral Counselors																			
Physical Therapists		87				75													
Physician Assistants									99							96			
Podiatrists	76		77	79	76			65*	74				89	74		73			
Professional Counselors				91	81					83									
Psychologists	82	92	77	79	80	79	75			83	80	84		82	85		74		75
Public and Other Facilities			87	81	84		84			89			90		85				
Social Workers		92			76	91	74			84				90			89		
Speech/Hearing Therapists		92		85	78														90
PERSONS COVERED																			
Adopted Children			85	87			91			88	88	91		81	89		90		
Continuation/Dependents				85	97	90	75			96	81			85		86	84	80	93
Continuation/Employees				85	97	90	75			96	92	74	75	84		86	84	80	93
Conversion to Non-Group			85	85	83	90				78	86		96	83	95	86	80	74	92
Dependent Students							82			92	78								78
Handicapped Dependents			77	69	71		71			70	72	68	72	67	86				72
Newborns	75	75	74	83	71	75	74	80	74	84	74	74	74	76	76	74	74	76	73
Non-Custodial Children							87												
TOTAL	6	13	13	17	19	11	19	1	7	13	10	6	5	14	13	10	13	5	12

Notes: The date refers to year enacted or significantly revised. Mandated offerings are shaded.

Mandates that do not apply to BCBS Plans are asterisked. Includes federal mandates for maternity stay (1996) and breast reconstruction (1998).

ME	MD	MA	MI	MN	MS	MO	MT
							91 ⁺
89	73	87	79	73	80	78	67 ⁺
75	73	75	85 ⁺	73	74	78	83
	83						
96				93			
							99
	78	85	91	83	80		87
	84	93		83	80		87
	79			88	99		87
83	83	86		88			
	83			87			
82	73	75	85 ⁺	73	66	78	
			85				
	73						
96							
	83			73			
	86		91				89
	73	75	85 ⁺	73		78	
96	85	96					87
75	73	75	85 ⁺	89	74	83	81
79	82		68	73	68		73
83	77	81	83	93	92		85
	83					84	
	91 ⁺	75		83			91
86	77			77	95	69	
86	79	96		73	72	85	81
82	79		85	77		81	81
				93			
	77	56	66	69	72		71
76	79	74	86 ⁺	73	74	74	73
89				93			89
15	24	14	13	22	13	10	18

	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT
PROVIDERS																			
Acupuncturists		91			89													99	
Chiropractors	67	82		80	84	97	73	89	80	89		80	87	80		81	79	75	99
Dentists	75	90		79	77 [*]	75	75		73	89	80	49				74	83	86	
Dieticians																		87	86
Licensed Health Profs		90													80				86
Marriage Therapists			99										93					91	86
Massage Therpists																			
Naturopaths																			86
Nurses		85		84		84		85				86							86
Nurse Midwives	84	90		82	85	82	93	85	84	71		81	90		80	94			79
Nurse Anesthetists		90						85				88			89				
Nurse Practitioners		90	85		98		93	85			79	88	91		80	96	99	86	
Nurse, Psychiatric		90					93	89				88	91						
Occupational Therapists		90				oo												97	86
Optometrists	69	90		67	87 [*]	75	73		80	oo	71	78		85	80	65	79	75	
Oral Surgeons		90	75																
Osteopaths	67	90			87 [*]				80	89		49			80			58	86
Pastoral Counselors							95												
Physical Therapists		90		75	97	73						82						97	86
Physician Assistants		90																99	86
Podiatrists	69	90			87 [*]	75	73		80	89		67		72	80	65	77	75	
Professional Counselors			99					99						93			94	89	96
Psychologists	74	80	75	73	87 [*]	71	77	87	74	71	75	88		94	89	92	77	75	
Public and Other Facilities	84						75		76		81								83
Social Workers		87	94			85	93	89			89				88	85	87	75	
Speech/Hearing Therapists		90				93				99		94				88	83	86	
PERSONS COVERED																			
Adopted Children		89			88	92	91	87	89	86	91				83			89	85
Continuation/Dependents	89	95	81		83	92	83	87		86	83		83	78	80	86	79	86	85
Continuation/Employees	89	95	85			92		81		86	85					86	77	86	85
Conversion to Non-Group	78	95			83	81	82	83	84		81	76 [*]	78	78	79	80	77	79	85
Dependent Students	76							81										97	
Handicapped Dependents		95	69	66	69	89	73	83	71			68		70	69	69	81	75	83
Newborns	75	76	75	75	75	89	73	79	74	75	75	76	78	74	76	74	73	77	76
Non-Custodial Children		95						87			89							95	90
TOTAL	13	26	10	9	15	17	16	17	12	12	12	16	9	8	14	15	25	26	6

Notes: The date refers to year enacted or significantly revised. Mandated offerings are shaded.

Mandates that do not apply to BCBS Plans are asterisked. Includes federal mandates for maternity stay (1996)and breast reconstruction (1998).

VA	WA	WV	WI	WY	TOTAL
	95				7
88	95	96	87	71	44
68			75	71	36
				91	3
				71	8
					8
	95				2
	95				4
	81				9
97	81	83			31
				71	15
	81			71	26
89		77		71	16
				71	12
77			75	71	38
					5
77				71	17
					2
87				71	13
				71	9
79	83		75	71	31
87					14
77			94	85	42
	87		80	75	21
87				71	26
89				71	15
91	88			89	27
79	85	83	80		36
79	84	82	80	95	36
88	84		80	83	39
					8
74	69		75	71	36
76	84	75	76	89	51
				89	10
18	15	6	11	23	687

ADDITIONAL MANDATED BENEFITS

CT	Lyme disease (99) Pain management specialist (00) Ostomy related supplies (00)
DE	Colorectal cancer screening (00)
GA	Morbid obesity treatment (99+)
IL	Colorectal cancer screening (98)
IN	Colorectal cancer screening (00) Morbid obesity treatment (00+)
ME	Prescription drugs (83)
MD	Blood products (75) Alzheimers (86+) Chlamydia screening (99) Minimum testicular cancer stays (99)
MN	Elimination of port-wine stains (93) Lyme disease (96)
MT	Denturists (85)
NJ	Chiropodists (53) Wilm's tumor (90) Congenital bleeding disorders (98) Wellness exams (99)
NM	Lay midwives (85)
NY	Ambulatory cancer treatment (82)
NC	Prescription drugs (79)
PA	Birthing centers (82) Chemotherapy (89)
RI	Newborn sickle cell testing (88) Hearing aids (00+) Colorectal cancer screening (00)
TN	Chemotherapy (96) Chlamydia screening (99+)
TX	Alzheimers (89)
VA	Chiropodist (77) Colorectal cancer screening (00) Opticians (77) Morbid Obesity treatment (00+) Congenital bleeding disorders (98) Cancer pain drugs (99) Minimum hysterectomy stays (99)
WA	Neurodevelopment therapy (89) Prescription Drugs (00)
WV	Colorectal cancer screening (00)
WI	Kidney disease (74)

Notes: The date refers to year enacted or significantly revised.
+ indicates that the mandate only has to be offered to groups / individuals, as opposed to a mandated requirement.

Labor Market Effects of State Mandated Benefits on Employment

- Mandates significantly reduce wages, but not employment

Gruber, *American Economic Review*, 1994
(maternity benefits)

Kaestner & Simon, Michigan State U., 2000 (small group vs. ERISA)

- Not proven

Bhattacharya & Vogt, Stigler Center,
Univ. of Chicago, 2000

Labor Market Effects of State Mandated Benefits on Employment

- Reshuffle compensation portfolio
- Ban low-cost health insurance contracts
- Decrease insurance coverage
- Cannot increase employment
- Raise cost of hiring

Bhattacharya & Vogt, 2000

Sloan & Conover, *Inquiry* 1998

Sloan, Conover & Hall, *Regulation* 2000

Morrissey, AEI 1991

Cost Effects of State-Mandated Benefits on Health Insurance Premiums

- Absolute number of mandates doesn't matter much
- Some mandates raise premiums
- Others actually save costs

Henderson, Seward & Taylor,
Baylor University, 2003
forthcoming

Cost Effects of State-Mandated Benefits on Health Insurance Premiums

Henderson et al

- Mandating additional providers (average state has 8.5 mandates)
- Lowers HMO premiums
- No significant impact on indemnity premiums
- Possible offsetting effects

Increased claims frequency & higher spending
for previously unavailable services

Substitutes as low-cost alternative –
decreasing severity of claims
and lowering spending

Cost Effects of State-Mandated Benefits on Health Insurance Premiums

Henderson et al

- Mandates lowering premiums (nurse practitioners, dentists, psychologists)
- Mandates raising premiums (social workers, podiatrists)
- More have a statistically significant premium effect on indemnity plans than HMOs

Cost Effects of State-Mandated Benefits on Health Insurance Premiums

Henderson et al

Mandating benefits (average state has 7 mandates)

Raises premiums

More significant impact on indemnity than
HMO premiums

Of seven most common:

Drug abuse treatment raises premiums most

Off-label drug use increases premiums

Alcoholism treatment lowers premiums most

Cost Effects of State-Mandated Benefits on Health Insurance Premiums

Henderson et al

Cervical cancer screening, mammography
screening – Raises indemnity premiums

Well child care lowers indemnity premiums

Minimum maternity stays – no signif effect

Cost Effects of State-Mandated Benefits on Health Insurance Premiums

Henderson et al

Mandating additional persons to be covered (average
state has 4.7 mandates)

Lowers premiums

Guaranteed conversion from group to non-group plan

Lowers premiums

Why resist coverage of premium lowering services?

Adverse selection?

No guarantee policyholder stays in plan long enough to benefit

Other mandates may simply not be binding (standard policies generally provide them)

Cost of Health Services Regulation

Conover, Cato Institute, forthcoming

- Cost without transfers: \$7 billion
 - \$5.4 billion – Henderson et al. 2003 lower bound
 - \$8.5 billion – Acs, Winterbottom & Zedlewski 1992 upper bound
- Costs with transfers: \$28.8 billion
 - \$8.9 billion – lower bound
 - \$48.2 billion – upper bound

Cost of Health Services Regulation

Conover, Cato Institute, forthcoming

Uninsurance Effects

- 20-25 percent of uninsured due to mandated benefits costs
Sloan & Conover 1998

Use half the reported percentage as an upper bound (to correct for extrapolations and fact that no state is mandate-free)

Other Effects

Greater employer propensity to self-insure

Lower wages/decreased employment/

reduced generosity of fringe benefits

Kaestner and Simon 2002

Politics of Mandated Benefits

- Off-Budget (costs don't appear as explicit items)
- Affect less than half of state's population (falls disproportionately on workers in smaller firms)
 - 33% if applies to private group plans
 - 42% if applies to private group plans and individual policies
- Disproportionately affect small firms (reduced coverage effects, w/ great price sensitivity)
(Jensen & Morrissey, HIAA, 1999)

Politics of Mandated Benefits

- Need to compare peers (small employers face different elasticity than larger self-insured employers)
 - Federal “regulation by body part” slowed in late 1990s
 - Distracted by PBOR megaregulation effort
 - Promoted and supported by interest groups (providers, disease groups)
 - Little takeup for “Bare Bones” insurance policies (minimum benefit, affordable coverage)
- Morrisey & Jensen, 1996

Havighurst, Law & Contemporary Problems, 2002

- Political market for consumer protection regulation of health care
- Consumers/voters with greater preferences for regulation are the most aware, influential, and politically active members of the population
- Informal coalition of upper-middle-class voters and special health industry interests seeking to use high standards to eliminate low-cost competition and increase demand
- Income-inelasticity of health care (higher-income people spend higher % of incomes on health services)
- Most consumers/voters believe insurers or employers pay the added costs of regulated quality and covered services

Alternatives & Remedies

- State-level Mandated Benefits Review laws
- Consumer-driven health plan options, with less comprehensive, early-dollar coverage (MSAs, HRAs, FSAs, HSAs, DCs)
- Tax parity for all health insurance purchasers
- Competitive federalism (interstate competition in insurance regulation)
- Carve outs (Internet-purchased insurance, voluntary multi-state purchasing groups, individual tax credit-eligible policies)

Alternatives & Remedies

- No unfunded mandates at state level, either
 - Require state-financed premium rebates to customers who decline portions of mandated group coverage
- Federal preemption?

Likelihood?

