Insight

Health Reform: Here We Go Again

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From Kaiser Health News By Douglas Holtz-Eakin and Michael Ramlet

Consistency may emerge as the only merit of the health care reform circus. Damaging, poorly developed policies and a broken process characterized passage of the health law, the Patient Protection and Affordable Care Act. Implementation is shaping up in the same vein.

Consider the latest controversy over “medical loss ratios”. The MLR measures how much of premiums insurers pay out for medical care (versus, say, administrative cost). The new law requires that insurers have an MLR of at least 80 percent for individuals and small businesses, and 85 percent for large employers, or pay a refund to beneficiaries.

The health overhaul delegated to the National Association of Insurance Commissioners the job of defining medical care expenses and a myriad other details associated with the MLR computation. But the law was clear on at least one point: Sec. 2718 of the new law says unambiguously that the MLR is supposed to be calculated “excluding Federal and State taxes and licensing or regulatory fees.”

So it was a bit shocking to see Sen. Max Baucus, D-Mont., and five other committee chairmen write to Health and Human Services Secretary Kathleen Sebelius and assert that “Federal taxes and fees in this context is meant to refer only to Federal taxes and fees that relate specifically to revenue derived from the provision of health insurance coverage that were included in the [health reform legislation].” And it was outright amazing to see President Barack Obama schedule, and then abandon, talking to the NAIC annual convention.

The episode is revealing on both its substance and the process.

To begin, there is no defense for including taxes in any measure of available resources as part of an MLR. Whether used to measure dollars available for payments for medical expenses or devoted to administrative costs, taxes are simply not available for those purposes and must be excluded – six chairmen notwithstanding.

Worse, including taxes raises the threat of damaging and inappropriately double taxation. Most health plans are required to pay federal income taxes as well as payroll taxes. If these taxes paid to the federal government are not excluded from the premium revenue, the health plans’ MLR will be paying a potential double tax or rebate on the same net income: first paying taxes to the federal government and then a rebate to consumers using the same dollars. Double taxation is wrong in principle and in practice may be the death knell for smaller insurers.

But it doesn't end there. MLRs have typically varied greatly across market segments and geography, something the NAIC has become familiar with during state-based reviews of rate filings. The health law federalizes the MLR and employs a blunt one-size-fits-all approach that does not permit review and fine-tuning of its impacts. Is the real agenda to create a federally-run public utility instead of a vibrant private health insurance industry?

Federalizing the MLR may have collateral consequences. Originally Americans were promised that they could keep insurance with which they were satisfied. Now separate rulemaking has revealed that even modest changes in benefit design–exactly the kind of changes insurers may be forced to undertake to satisfy the MLR regulations–may disqualify policies' grandfathered status and violate the Obama administration's promise.

Finally, the very presence of a federal MLR will threaten desirable innovations. The easiest way to satisfy the MLR requirement will be to spend money on those activities that bureaucrats have already blessed. But what happens if an insurer invests in an innovative tracking procedure for the chronically ill? Is this medical spending? Or an administrative outlay? The reform may exacerbate the problems of a health care sector that has lagged woefully behind the remainder of the economy in productivity growth.

But the process is just as important as the policy nuts and bolts.

The aggressive interjection of Congress into the rule-making process so soon after passage of legislation is unprecedented. The appearance of the president being prepared to do so as well puts an exclamation point on the politicization of what is intended to be a fact-finding and due diligence exercise. Given that the MLR is merely the first of hundreds of such efforts, the scope for political re-litigating of the new law is astounding. This breeds uncertainty that is undesirable for the insurance business.

The health law's shortcomings in controlling health care costs and damage to the federal budget outlook are understood. But the economic consequences of greater uncertainty and reduced innovation are only now becoming clear.