NAIC's Model State Law: Lifetime and Annual Benefit Limits

The National Association of Insurance Commissioners (NAIC) is composed of the state government officials charged with regulating insurance companies in each state or territory. The NAIC has been developing Model State Laws for over 100 years to encourage uniformity in the regulation of insurance products.

To ensure that state regulators have the necessary state authority to monitor and enforce health insurers' compliance with the Patient Protection and Affordable Care Act (ACA), the NAIC has developed a set of Model State Laws to implement the ACA's consumer protections that became effective on Sept. 23, 2010. These Model Laws are intended to provide states with a minimum level of protection required by the federal law. States can decide to adopt more stringent requirements.

This fact sheet is part of a series intended to aid consumer advocates and legislators in understanding the purpose of the NAIC's Model State Laws, identifying opportunities to improve the laws from a consumer perspective, and highlighting potential efforts to weaken the state's law.

For the new consumer protections eliminating lifetime limits on benefits and restricting annual limits on benefits, the NAIC has developed a Model Law called "Model Language for Lifetime and Annual Limits," that includes the necessary legislative language for states to enact the minimum federal requirements.

What does the Model Language do?

The Model Language repeats the federal law's requirements on lifetime and annual limits by:

- Prohibiting lifetime limits on the dollar value of the essential benefits [1] required under the ACA, beginning Sept. 23, 2010
- Prohibiting annual limits on the dollar value of the essential benefits required under the ACA, beginning January 1, 2014
    - Beginning Sept. 23, 2010 restricting annual limits to $750,000
    - Beginning Sept. 23, 2011 restricting annual limits to $1.2 million
    - Beginning Sept. 23, 2012 restricting annual limits to $2 million
- If a plan receives a waiver from the U.S. Department of Health and Human Services (HHS), then the NAIC's Model Language requires plans to notify consumers and policyholders – and the state's insurance commissioner – that they are not subject to the restrictions on annual limits.

- Requiring plans to reinstate an individual who lost coverage because they had previously reached their lifetime limit on benefits. However, this protection only applies to people in group or family coverage, not to individuals who lost non-group coverage.

Consistent with the ACA, the prohibition on lifetime limits applies to all plans, while the provisions on annual limits apply to grandfathered *group* health plans, but not to grandfathered *individual* health plans.[2]

Four things that could improve the Model Language

1. **Extend the law to grandfathered plans.** While the prohibition on lifetime limits applies to *all* health plans, the ACA exempts grandfathered individual market health plans from the restrictions on annual limits. However, because the ACA sets a floor for consumer protection, states could go beyond this rule to require grandfathered plans to comply with market reforms, including the restrictions on – and eventual prohibition of – annual limits.
2. **Expand restrictions on annual limits.** The law prohibits annual limits on the *dollar* value of benefits. But it does not prohibit plans from imposing *service* limits, such as the number of doctor's visits, days in the hospital, or number of drug refills a patient can have each year. This creates a loophole as plans that currently impose annual dollar limits could simply switch to service limits and comply with the law. States could close that loophole by clarifying that *all* annual limits are prohibited, not just dollar limits.
3. **Ensure restrictions apply to all essential benefits.** The prohibitions on lifetime and annual limits apply only to the ACA's essential benefits package. Because HHS has not yet defined what must be in the essential benefit package, the law allows health plans to make "good faith" determinations of what would be covered and subject to the prohibitions on lifetime and annual limits. Because this leaves so much discretion to the health plans, states can and should authorize their insurance commissioners to conduct audits and enforcement activities to ensure plans are truly making these benefit determinations in good faith.
4. **Require plans to reinstate individuals who lost coverage because they hit their lifetime limits.** The law requires plans to reinstate someone who lost coverage because of a lifetime limit if they are part of an employer group or family with a current plan, but not people who lost *individual* coverage because they hit their lifetime limit. States can make sure they get the same protection by requiring plans to reinstate individuals in the same or a substantially similar policy.

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[1] The ACA requires new individual and small group health plans to provide a minimum range of essential benefits, which must include the following broad categories: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance abuse disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness and chronic disease management services; and pediatric services, including oral and vision care.

[2] "Grandfathered" plans are those that were in existence prior to March 23, 2010. The ACA exempts them from many – but not all – of the ACA's consumer protections.