ConsumersUnion
POLICY & ACTION FROM CONSUMER REPORTS

ISSUE BRIEF
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Rebates Lost: Measuring the Impact of H.R. 1206 on Health Insurance Rebates

SUMMARY

In 2012, health insurance companies rebated $1.1 billion to individuals, families, and businesses as required by the health reform law. Under H.R. 1206, *the Access to Professional Health Insurance Advisors Act*, these rebates would have been reduced to as little as $378.8 million. This loss of two-thirds of total rebates comes at a direct cost to consumers.

Under current law, the medical loss ratio rule states insurance companies must spend at least 80 percent of premiums on actual medical care or rebate consumers the difference. The proposed law, H.R. 1206, would amend the medical loss ratio rule to broadly exclude any costs associated with agents and brokers. Many insurance companies that did not meet the new standard to spend most of health insurance premiums on medical care in 2011 would have owed fewer rebates or no rebates at all under the bill. The medical loss ratio rule under the Affordable Care Act provides a unique and tangible benefit to consumers allowing them to compare value among insurance plans and requiring rebates from insurers that fail to meet the minimum standard. These benefits are largely lost under H.R. 1206.

Background

Under H.R. 1206, consumers would have lost as much as $722.6 million in rebates in 2012 alone.

Beginning in 2011, the Affordable Care Act (ACA), also known as the health reform law, required insurers to spend at least 80 percent of premiums on actual medical care and activities that improve the quality of care for small businesses and individuals who buy coverage on their own. For large businesses purchasing coverage, the standard is 85 percent. If insurers fail to meet the requirement, they must rebate policyholders the difference. This new rule, known as the "medical loss ratio" or MLR rule, also shines a light on how insurers spend premium dollars with new reporting requirements and public disclosures.

The U.S. Department of Health and Human Services (HHS) issued a report on June 21, 2012 detailing final rebate amounts that individuals and businesses would receive from insurers who did not meet the MLR requirement in calendar year 2011. That report found that insurance customers were owed just over $1.1 billion in rebates across the United States.[1]

H.R. 1206, the *Access to Professional Health Insurance Advisors Act of 2011,* seeks to change current law. The bill would remove certain types of expenses from the calculation – specifically, removing broker and agent compensation – without altering the overall target of 80 percent or 85 percent.

With such a large chunk of administrative costs removed from the calculation, many more insurers can meet the MLR requirement under H.R. 1206.

There is concern that making this change would significantly reduce the incentive of insurers to control administrative costs. With such a large chunk of administrative costs removed from the calculation, many more insurers can meet the 80 percent or 85 percent requirement. Since insurers must pay rebates when they don't hit these targets, the impact of any change can be measured by the impact on consumer rebates.

In 2011, the National Association of Insurance Commissioners (NAIC) provided estimates of the impact of changing the medical loss ratio calculation. Their estimates used data provided by insurers through the 2010 Supplemental Health Care Exhibits (SHCE).[2] Overall, the analysis found that individuals and businesses would have seen a reduction of approximately two-thirds of rebates if insurance producer (brokers and agents) compensation were excluded from the equation.

Given the significant change to the MLR calculation proposed in H.R. 1206, this issue brief estimates the impact that removing broker and agent compensation from the equation would have on 2011 MLR rebates paid in the summer of 2012.

Methodology

Our analysis uses the percentage decline in rebates for the individual, small, and large group market segments extracted from the 2011 NAIC report and applies those estimates to the final reported rebate amounts in 2012 by line of business.

Because of ambiguity in the bill (H.R. 1206), our analysis explores two interpretations. The broad language in H.R. 1206 makes it unclear whether some or all broker and agent fees would be removed from the MLR equation. The bill

[1] *See* "The 80/20 Rule: Providing Value and Rebates to Millions of Consumers", June 21, 2012. Available at http://www.healthcare.gov/law/resources/reports/mlr-rebates06212012a.html

[2] *See* Report of the Health Care Reform Actuarial (B) Working Group to the Health Insurance and Managed Care (B) Committee on Referral from the Professional Health Insurance Advisors (EX) Task Force Regarding Producer Compensation in the PPACA Medical Loss Ratio Calculation.

defines "independent insurance producer" in a manner that could potentially exclude independent agents and brokers as well as those employed by insurers.[3]

The first modification examines the impact of excluding just independent broker and agent costs from the equation, relying on the percentage reduction from an identical approach taken by the NAIC using line 10.2 from the , "Agents and brokers fees and commissions."

The second modification assumes the proposed law is interpreted more broadly and relies on a second NAIC estimate incorporating line 10.2, "Agents and brokers fees and commissions," and line 10.1, "Direct sales salaries and benefits" from their SHCE data.

Findings

Table 1 shows the percentage decline in rebate amounts for the individual, small group, and large group markets using the NAIC estimates in the 2011 report. Column 1 shows the percentage decline when removing just agents and brokers fees and commissions (line 10.2 of the SHCE) and column 2 shows the percentage decline if direct sales salaries and benefits (line 10.1 of the SHCE) are also removed.

TABLE 1 —ESTIMATED DECLINE IN REBATES IF BROKER CALCUALTIONS CHANGED

	Percentage Reduction in Rebates Modification 1	Percentage Reduction in Rebates Modification 2
Individual Market	-58.98%	-63.34%
Small Group Market	-67.32%	-71.75%
Large Group Market	-59.01%	-62.81%
Total, Nationwide	-60.90%	-65.12%

Source: Report of the Health Care Reform Actuarial (B) Working Group to the Health Insurance and Managed Care (B) Committee on Referral from the Professional Health Insurance Advisors (EX) Task Force Regarding Producer Compensation in the PPACA Medical Loss Ratio Calculation

Table 2 lists the final rebate amounts based on 2011 insurance premiums and insurer expenses as reported by HHS on June 21, 2012.

[3] Current language in H.R. 1206 states "The term `independent insurance producer' means an insurance agent or broker, insurance consultant, benefit specialist, limited insurance representative, and *any other person* required to be licensed under the laws of the particular State to sell...insurance" (italics added). Hence, the language appears to include in-house insurance agents. See Professional Health Insurance Advisors Act of 2011 http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.1206:

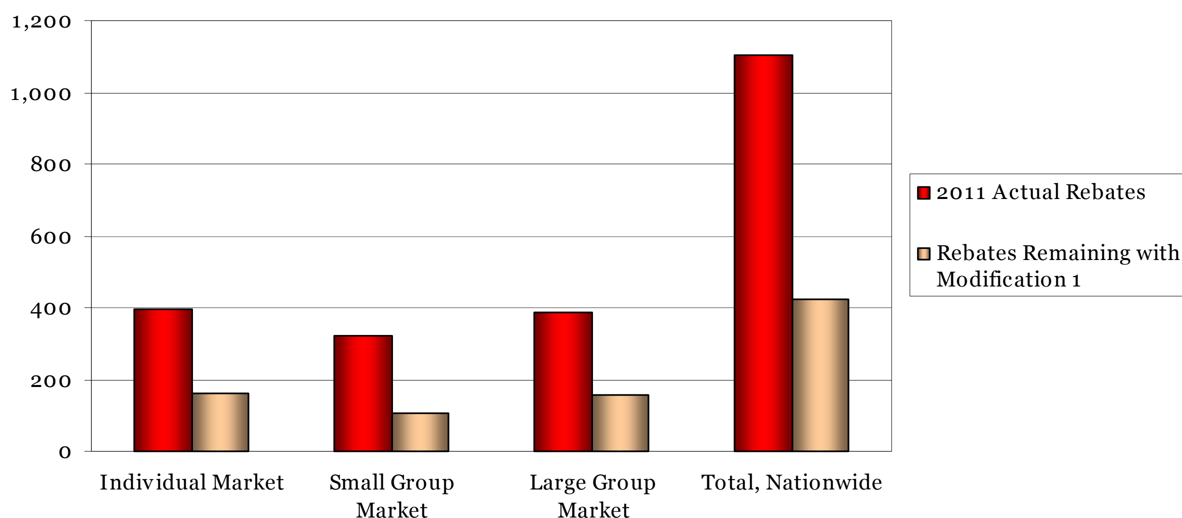
TABLE 2: FINAL REBATE AMOUNTS FOR 2011 PREMIUMS BEFORE MODIFATION, DOLLARS IN MILLIONS	
	2011 Final Rebate Amounts
Individual Market	$ 393.9
Small Group Market	$ 321.1
Large Group Market	$ 386.4
Total, Nationwide	$1,101.4

Source: HHS - "The 80/20 Rule: Providing Value and Rebates to Millions of Consumers", June 21, 2012.

ESTIMATES FOR MODIFICATION 1

Chart 1 estimates how much rebates for 2011 premiums would have declined under Modification 1, removing agent and broker fees and commissions.

CHART 1: ESTIMATED DECLINE IN REBATES FOR 2011 PREMIUMS UNDER MODIFICATION 1, IN MILLIONS



Source: Consumers Union analysis

Not surprisingly, removing agent and broker fees and commissions from the equation significantly reduces rebates:

- rebates for individuals would have declined from $393.9 million to $161.6 million, a loss of $232.3 million for individuals and families that purchase coverage on their own outside of an employer;
- small businesses would have seen a reduction in 2011 rebates from $321.1 million to $104.9 million, a loss of $216.2 million for small businesses; and

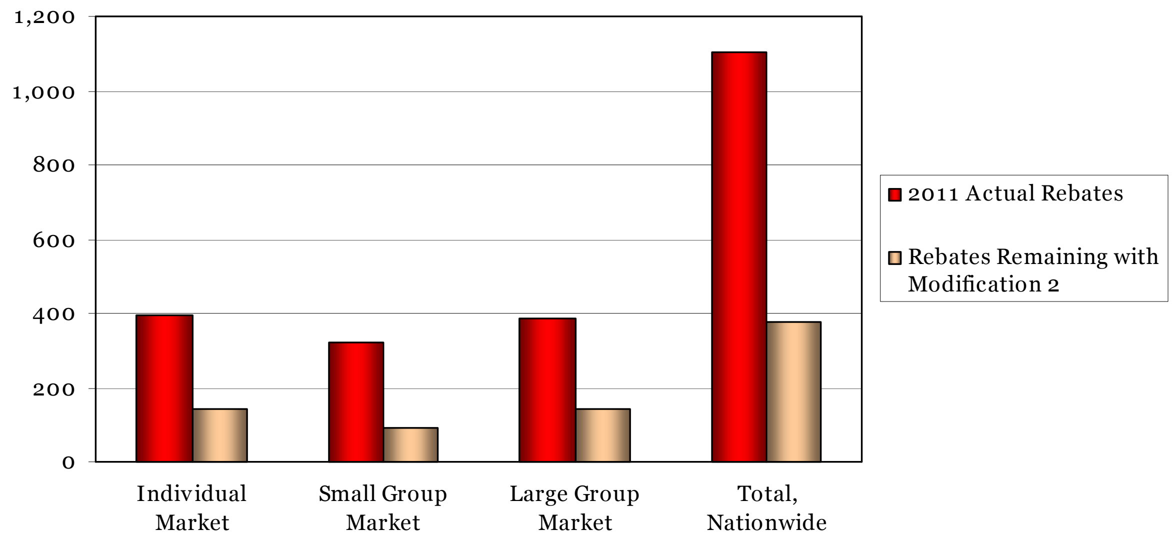
- large employer rebates would drop from $386.4 million to $158.4 million, a decline of $228 million.

In total, if agent and broker fees and commissions were removed from the MLR calculation, we estimate that individuals, families, and businesses would have lost $676.5 million in rebates in 2012.

ESTIMATES FOR MODIFICATION 2

Chart 2 shows estimates of how much rebates for 2011 premiums would have declined under Modification 2, removing direct sales and salaries in addition to agent and broker fees and commissions.

CHART 2: ESTIMATED DECLINE IN REBATES FOR 2011 PREMIUMS



Source: Consumers Union analysis

Rebate reductions increase under this modification:

- rebates to individuals drop even further to $144.4 million, for a loss of $249.5 million;
- small business rebates are down to $90.7 million, $230.4 million less than under the current rule with no modification; and
- large groups lose a total of $242.7 million leavings rebates of just $143.7 million after the modifications.

In total, if direct sales and salaries are removed from the MLR equation in addition to removing agent and broker fees and commissions; individuals, families, and businesses would have lost $722.6 million in 2012.

Conclusion

If H.R. 1206 were in effect prior to rebates being paid in 2012, consumers and businesses would have lost as much as $722.6 million in rebates, reducing payments from insurers by almost two-thirds. H.R. 1206 dramatically alters the MLR equation allowing insurers to increase their medical loss ratios and either avoid paying rebates all together or pay a lower rebate amount.

The medical loss ratio rule under the Affordable Care Act provides a unique and tangible benefit to consumers allowing them to compare value among insurance plans and requiring rebates from insurers that fail to meet the minimum standard. These benefits are largely lost under H.R. 1206 as the bill would manipulate the equation leaving consumers as little as an estimated $378.8 million in rebates, a drastic reduction from the $1.1 billion paid to individuals, families, and businesses in 2012.

This analysis and report was produced by Blake Hutson, Consumers Union Outreach Coordinator.

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WWW.CONSUMERSUNION.ORG

HEADQUARTERS
101 Truman Avenue, Yonkers, NY 10703
Phone: (914) 378-2000 Fax: (914) 378-2928

SOUTHWEST OFFICE
506 West 14th St., Suite A, Austin, Texas 78701
Phone: (512) 477-4431 Fax: (512) 477-8934

WASHINGTON DC OFFICE
1101 17th Street NW, Suite 500, Washington, DC 20036
Phone: (202) 462-6262 Fax: (202) 265-9548

WEST COAST OFFICE
1535 Mission Street, San Francisco, CA 94103
Phone: (415) 431-6747 Fax: (415) 431-0906