

# STATE FLEXIBILITY IN HEALTH REFORM

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## Preemption

Provisions of PPACA will potentially preempt state laws.

Similar to HIPAA:

**Nothing in this title shall be construed to preempt any State law that does not prevent the application of the provisions of this title.**

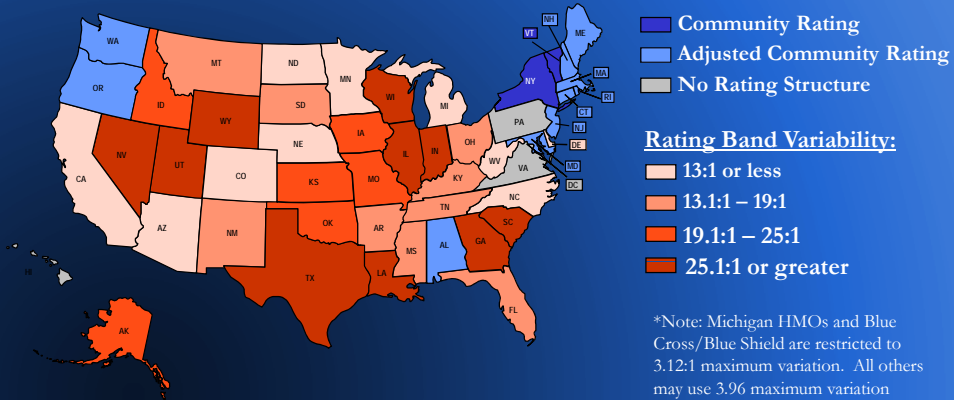
**PPACA §1321(d)**

Exceptions:

Mandated benefits: States must cover cost of mandated benefits beyond essential benefits package.

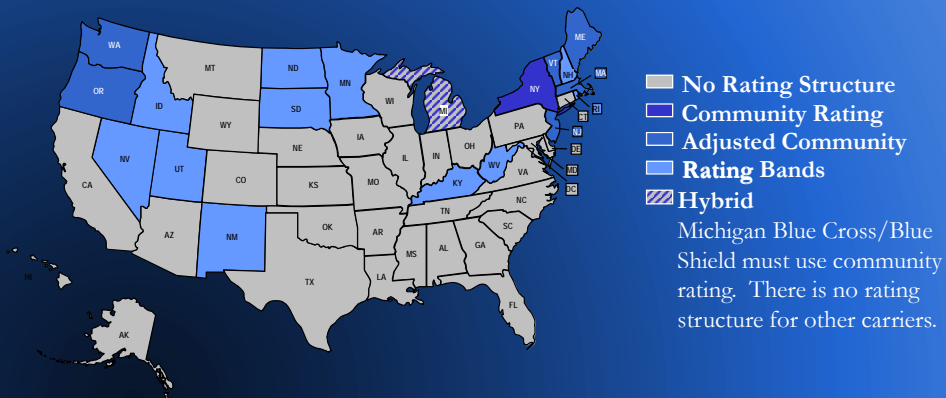
Grandfathered plans: States may not require grandfathered plans to be pooled with post-reform plans.

# Small Group Variation

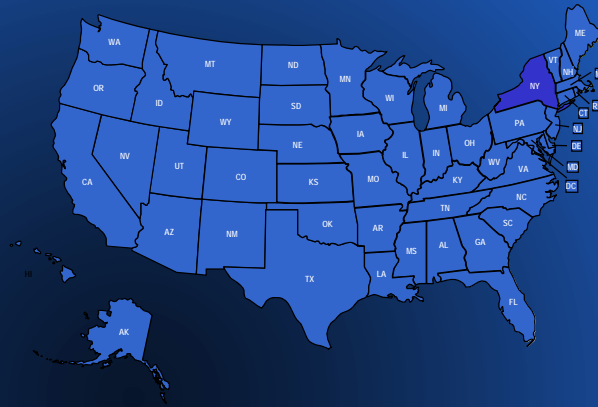


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# Individual Market Rating



## Reformed Rating Rules



- No Rating Structure
- Community Rating
- Adjusted Community
- Rating Bands
- Hybrid

Michigan Blue Cross/Blue Shield must use community rating. There is no rating structure for other carriers.

## Flexibility

- Exchanges
- Interstate Compacts
- Basic Health Plans
- Waivers

- Regional cooperation or Single state?
- Negotiated purchasing or Transparent market?
- Merged or Separate?
- Organization
- Outside market

- States may form compacts to facilitate interstate sales of non-group policies.
- Policies are only subject to laws & regulations of state where policy is issued, *EXCEPT*:
  - Market conduct
  - Unfair trade practices
  - Consumer protection standards (including rating rules)
  - Disputes relating to performance of contract.
- Insurers must be licensed in each State, or submit to each State's jurisdiction for the above items.

## Implementation

- Secretary must, in consultation with the NAIC, issue regulations by July 2013
- Secretary *may* approve compacts if they:
  - Provide essential benefits
  - Meet PPACA limitations on cost-sharing
  - Meet other requirements specified by PPACA.
- Compacts become operational as early as January, 2016

## Health Care Choice Compacts vs. Health Care Choice Act (Shadegg Bill)

### Compacts

- Under state control
- Preserves rating rules
- Guaranteed-issue environment
- Less underlying variation mitigates risk of regulatory arbitrage

### HCC Act

- Forced upon states
- Circumvents rating rules
- Mix of environments in states
- Severe risk of regulatory arbitrage



## Health Care Choice Compacts vs. Interstate Insurance Product Regulatory Compact (IIPRC)

### Health Care Choice

- Multiple Compacts
- Decentralized model
- Cost reduction focus

### IIPRC

- Single Compact
- Centralized model
- Speed to market focus



## NAIC Role

- Subgroup formed. Chaired by MN Commissioner of Commerce Glenn Wilson and RI Health Insurance Commissioner Chris Koller.
- Has not yet convened.
- Will work on guidelines for compacts.
  - Will probably develop a model compact as well.

## Basic Health Plans

- 100%-200% FPL
  - Funded with 95% of subsidies that would have been provided for eligible population
  - Eligible population may not purchase in Exchange
- States may contract to provide essential benefits to eligible individuals.
- May form regional compacts to offer basic health plans.

## Basic Health Plans (cont.)

- Secretary may certify plan if:
  - Premiums below benchmark Exchange plan.
  - Actuarial value of
    - 90% for individuals below 150% FPL
    - 80% for all others
- Competitive bidding process for multiple plans.
- States may form regional compacts to offer plans

- States may apply for 5-year waivers of provisions of PPACA:
  - Qualified health plan requirements
  - Exchanges
  - Subsidies
  - Employer responsibility
  - Individual mandate
- Aggregate subsidy amounts for state used to fund
- Budget-neutral for federal government over 10 years
- Coordinated with other waiver processes

- NAIC Activities
  - Medical Loss Ratios
  - Consumer Information
  - Premium review
  - Exchanges
  - Uniform application form
  - Uniform fraud reporting form
  - Data sharing
  - Transitional reinsurance and risk adjustment
  - Medigap changes
- Enforcement





Questions?

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