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What lies ahead: Kassebaum-Kennedy bill becomes law

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Now that the Kassebaum-Kennedy bill has been signed into law, what changes can actuaries anticipate? Insiders involved in the public debate are watching the states for their responses, because the future of individual health insurance plans will be determined at the state level.

Known formally as the Health Insurance Portability and Accountability Act of 1996, the bill's formation and passage rank as landmarks by Capitol Hill watchers. An article in the August 5 issue of *National Underwriter* by Washington editor Steven Brostoff called Kassebaum-Kennedy an "historic, unprecedented agreement" because of its joint Republican-Democrat sponsorship. Of equal or greater importance is that the bill is the first major health legislation to become law since Medicare was established in 1965. Also, the bill received unanimous approval by the Senate.

Actuaries undoubtedly had some impact on the Kassebaum-Kennedy bill as it moved through Congress. In a speech to the American Academy of Actuaries, bill co-sponsor Sen. Nancy Kassebaum (R-Kan.) praised the profession for its work in health care and pensions. "I marvel at what actuaries do, the information that you provide, and the objectivity and credibility that you bring to the public policy debate," she said.

An Academy-sponsored work group, among others, conducted a study earlier this year to make projections for the bill's possible effect on individual health care insurance premiums. It is here that actuaries will see the most impact. Work group chairman Tom Stoiber, member Cecil Bykerk, and Tom Wildsmith of the Health Insurance Association of America look at what lies ahead for actuaries as the health insurance market and its regulatory environment move toward the law's July 1, 1997, effective date.

"The key is whether a state is operating under its own law or the new federal law," said Stoiber, a senior consultant for Coopers & Lybrand. A state government can request a waiver from the group-to-individual guarantee issue provisions from the federal government when state law provisions meet or exceed those of Kassebaum-Kennedy. A state can petition for a waiver at any time, but states must do so by April 1, 1997, to avoid the July 1 start of the new federal law. Missing the April 1 deadline could delay the start of a state's new legislation — meaning that actuaries could be dealing with existing state law until July 1, then the federal law for several months and, finally, the new state law.

Stoiber and other actuaries point out that the issue at stake is pricing: How will the risk be spread for the newly eligible plan applicants — who are, almost by definition, adverse candidates for coverage?

Observes Stoiber: "The law does not specify pricing requirements, but it has many backdoor elements. Will pricing be determined primarily by the companies, by states, or by other regulators? There's a lot of work to be done, and no guidelines."

Says Wildsmith, "It's a real public policy dilemma as to which way to go on spreading the risk." He is policy research actuary for the HIAA, which also was active in the public debate on Kassebaum-Kennedy.

"The questions are: Will companies be allowed to rate the newly eligible based on their own expected health costs? If so, will they be able to afford it? And if not, who will bear the cost? The federal law is unclear," Wildsmith pointed out. "Will the individual pay most of the freight, will the market, or will a state's entire tax base [through government subsidy]?"

Observers agree that a legal guarantee of access to insurance without a guarantee of affordability is no guarantee at all. That's why state actions in the following months will be so important — and why actuaries involved in the debate over Kassebaum-Kennedy believe actuaries now must focus on discussion over state legislation.

"One of the things on the front end for actuaries is to sit down with their company strategists to see what roads they should go down in the states," said Cecil Bykerk, executive vice president and chief actuary, Mutual/United of Omaha Insurance Co. and member of the Academy work group.

"Before the states decide, the companies have some ability to go in and counsel — lobby, if you will — the governor or whoever makes the decision."

Wildsmith points out that actuaries can contribute greatly to state legislative discussion. "We could certainly help the state decision-makers look at the trade-offs between access and affordability," he said. "Actuaries of all stripes should lend their expertise.

"Actuaries need to seek out forums for discussion. Even though actuaries might represent different constituencies, they can still come to agreement on some core methodologies and some key assumptions. In whatever forum actuaries appear, they need to make clear what the differences are between estimates, why they arise, and what those differences imply about the policy decisions that must be made."

Prepare now for participation in state debates. With Kassebaum-Kennedy on the law books and the April 1 deadline less than six months away, "states might accelerate their own reform legislation," observed Stoiber. "We could see a dramatic flurry of activity."