Issue Brief: Collaborating with your State Insurance Commissioner

NOTE TO READER: When working on improving comprehensive tobacco cessation benefit coverage, it is important to understand different types of health insurance plans, what rules and regulations the plans need to follow, and who has the authority to hold the health insurance plan accountable. This brief was developed by the American Lung Association after interviewing a current and a former state insurance department representative. The information is intended to assist public health staff in understanding the role of state insurance commissioners and leveraging relationships these important stakeholders.

References to tobacco in this issue brief refer to commercial tobacco and not the sacred and traditional tobacco that may be used for ceremonial or medicinal purposes by some American Indian communities.

Introduction

Tobacco use is the leading cause of preventable death and disease in the United States. The majority of smokers want to quit (70%), but fewer than 10% are successful.[1] The 2020 Surgeon General's Report on Smoking Cessation[2] found that, "Insurance coverage for smoking cessation treatment that is comprehensive, barrier-free, and widely promoted increases the use of these treatment services, leads to higher rates of successful quitting, and is cost-effective."

Comprehensive Tobacco Cessation Benefit:

Seven FDA-Approved Medications:

- NRT Gum
- NRT Patch
- NRT Lozenge
- NRT Inhaler
- NRT Nasal Spray
- Bupropion
- Varenicline

Three Forms of Counseling:

- Individual
- Group
- Phone

To improve cessation coverage across the country, it is necessary to understand the coverage landscape in both Medicaid and commercial (private) health plans. It can be challenging to know what benefits are actually covered by health plans, as this information is not readily available to the public, including public health professionals and state tobacco control programs. There are also varying regulatory requirements and authorities, dependent on the type of health insurance.

The Affordable Care Act (ACA) requires most private health insurance plans to cover preventive services given an "A" or "B" grade by the United States Preventive Services Task Force (USPSTF)[3]. Tobacco cessation for adults has consistently received an "A" grade[4] and thus has been required to be covered, ensuring many people have access to the tools necessary to quit smoking.

In May 2014, the U.S. Departments of Treasury, Labor and Health and Human Services issued a bulletin, translating the USPSTF guidelines into insurance language to make it easier for health plans to know what to cover. The Departments said plans should be covering: all seven FDA-approved cessation medications (nicotine gum, inhaler, lozenge, spray and patch and bupropion and varenicline) for at least 90 days without prior authorization as well as the three forms of

counseling (individual, group and phone) for four sessions, at least twice a year.[5] Additional clarification by the tri-departments to ensure barrier-free coverage is needed; however, state

Insurance Commissioners can require some private plans to cover additional treatment, including ensuring that plans are covering this benefit and limit or prohibit the tobacco surcharge, which is an additional percentage of insurance premiums that can be charged to tobacco users[6].

Privately insured individuals smoke at a lower rate (9.2%) when compared to the national adult smoking rate (12.5%)[7]; however, because most people are privately insured, this is the biggest cohort of smokers.

This issue brief focuses on commercial coverage, specifically plans that are regulated by state insurance commissioners. Each state has an insurance commissioner who heads an insurance department. This state department is responsible for regulating fully insured private health insurance which includes any plan sold on the state's marketplace. Additional information is available at Working with Insurance Commissioners to Improve Tobacco Cessation Coverage.

Background: State Departments/Divisions of Insurance

A state's department of insurance regulates insurance products in that state. There are variations in insurance departments in terms of size, reporting arrangements (some might be part of a larger regulatory body like the department of commerce and others might be a standalone entity), and whether the insurance commissioner is an appointed or elected position. Insurance departments are unique and reflect variations in state policies, cultures and demographics. Regardless of the differences, insurance departments share some common responsibilities.

Additional Resources:

Strategies to ensure comprehensive coverage for Medicaid plans are covered in American Lung Association Issue Briefs including *Improving Tobacco Cessation Coverage through Medicaid Managed Care Contracting* and *Approaches to Promoting Tobacco Cessation Coverage: Promising Practices and Lessons Learned*.

Insurance commissioners are responsible for many types of regulated insurance coverage in their state beyond health insurance. Insurance commissioners may oversee homeowners and renters' insurance, auto insurance, life insurance and annuities, flood insurance, bail bonds, title insurance, travel insurance, small business insurance or pre-need funeral contracts. Across all of these types of insurance, including health insurance, the insurance departments are responsible for:

- Company Licensing. State laws require insurers and insurance-related businesses (including health plans and HMOs) to be licensed before selling their products or services. Insurers who fail to comply with regulatory requirements are subject to license suspension or revocation and states may exact fines for regulatory violations. For health insurance, the company providing the insurance would be the licensed entity.
- Producer Licensing. Insurance agents and brokers, also known as producers, must be licensed to sell insurance (including health insurance) and must comply with various state

laws and regulations governing their activities. The states administer continuing education programs to ensure that agents meet high professional standards. Producers who fail to comply with regulatory requirements are subject to fines and license suspension or revocation.

- Financial Regulation. Financial regulation provides crucial safeguards for America's insurance consumers. Periodic financial examinations occur on a scheduled basis. State financial examiners investigate a company's accounting methods, procedures and financial statement presentation. These exams verify and validate what is presented in the company's annual statement to ascertain whether the company is in good financial standing. If the insurance department determines a health plan might not be able to pay consumers' healthcare claims, they will take action.
- Market Regulation. Market regulation attempts to ensure fair and reasonable insurance prices, products and trade practices in order to protect consumers. Market conduct examinations for health insurers occur on a routine basis, but also can be triggered by complaints against an insurer. These exams review agent-licensing issues, complaints, types of products sold by the company and agents, agent sales practices, proper rating, claims handling and other market-related aspects of an insurer's operation. When violations are found, the insurance department makes recommendations to improve the company's operations and to bring the company into compliance with state law. In addition, a company may be subject to civil penalties or license suspension or revocation.
- Consumer Services. The states' single most significant challenge is to be vigilant in the protection of consumers. Many insurance commissioners view themselves as consumer advocates first and foremost. States have established toll-free hotlines, internet web sites and special consumer services units to receive and handle complaints against insurers and agents. For health insurance, these may have to do with claims denials, rate increases, or lack of network access.
- Product Regulation. State regulators protect consumers by ensuring that insurance policy provisions comply with state law, are reasonable and fair, and do not contain major gaps in coverage that might be misunderstood by consumers and leave them unprotected. They review rates to ensure compliance with rules and forms depending on the state's laws and regulations. Typically, health insurance companies file proposed benefits and rates in the spring of each year.

First and foremost, an insurance commissioner's primary responsibility is to ensure the solvency (financial health) of the insurance industry. Homeowners' insurance, auto insurance and commercial insurance – are all designed to protect the financial interest of a consumer. The importance of oversight on the insurance company's stability and financial viability is critical. The insurance commissioner also regulates insurance companies to make sure they are following the state and federal laws that govern insurance.

American Lung Association.

What Health Plans Does a State Insurance Department/Insurance Commissioner Regulate?

Commercial health insurers (also called health plans or payers) insure the largest number of people in the United States, through both employer-sponsored coverage (54% of the population[8]) and the individual marketplace (3% of the population[9]). Commercial payers offer products that include:

1. *Fully insured groups:* The insurance company carries all the insurance risk. These products are most frequently purchased by smaller employer groups (small group is defined as fewer than 100 covered lives).

2. *Self-insured groups:* The employer (or purchaser), not the insurance company, carries most of the risk. In this case, the health plan functions as an administrator that processes claims, ensures access to provider networks, and may or may not provide services such as medical management, wellness, pharmacy coverage and behavioral health. Many employer groups of 200 or more workers are self-insured.[10] Self-insured plans cover 64% of U.S. employees.[11] The financial risk to the employer of bearing responsibility for all medical costs is offset by not having to pay for health plan costs such as profit margin, or state health insurance premium taxes.

   Self-insured health insurance plans are not subject to state insurance laws and oversight. Instead, they are regulated at the federal level under ERISA (the Employee Retirement Income Security Act) and various provisions in other federal laws like Health Insurance Portability and Accountability Act (HIPAA) and the Affordable Care Act (ACA). Employers with self-insured plans must file a master plan with the U.S. Department of Labor and then prepare a Summary Plan Description (SPD) for their employees.

   Many state and municipal governments are self-insured, but they are not subject to ERISA. In general, ERISA does not cover plans established or maintained by governmental entities, churches for their employees, or plans which are maintained solely to comply with applicable workers compensation, unemployment or disability laws.

While self-insured plans are not regulated at the state level, public health staff can still work with these employers to improve coverage. Often working directly with large employers like the state can be very effective. The actions of the state employee health plan are often influential with other carriers who may hope to be selected to administer the plan in the future. Confirming strong tobacco cessation benefits for state employees is helpful before asking other plans to strengthen their coverage.

The American Lung Association webpage *State Tobacco Cessation Coverage Database* provides links to specific state employee health plan data.

How Can the Insurance Commissioner/Department Support Comprehensive Cessation Coverage?

State insurance commissioners can be important partners in promoting and enforcing tobacco cessation benefit coverage among fully-insured health plans in your state. Insurance commissioners can:

1. Using the "Product Regulation" duties described above, audit whether health insurers are compliant with preventive services/essential health benefits for plans they regulate (large group, small group and Marketplace or Qualified Health Plans).

2. Issue a bulletin to plans with information or guidance on coverage requirements, reporting requirements and plans for enforcement of regulations. Three examples of these include:
   - Vermont's Insurance Bulletin Tobacco Cessation Programs released on May 4, 2017,
   - New Mexico's Federal Requirements that Carriers Cover Certain Tobacco Cessation Products without Consumer Cost-Sharing released April 29, 2016,
   - Utah's Requirements for Tobacco Cessation released December 11, 2015.

3. Issue a consumer alert or press release, so consumers know what their plan should be covering. The department of insurance can provide information on how they have issued consumer alerts and guidance to insurance companies in the past. One example is Pennsylvania's PA Insurance & Health Departments Issue Consumer Alert On Tobacco Cessation Coverage issued on April 29, 2015.

State departments of health and state departments of insurance can often partner to figure out the best mechanism to use to support comprehensive cessation coverage from the choices above, or other state-specific options. Department of health staff can prepare for this by conversation by reviewing health statutes and regulations for their state.

How Can a Tobacco Control Program Engage the Insurance Commissioner/Department?

The American Lung Association interviewed two experts with deep understanding of a state insurance department to gather advice for tobacco control program staff:

- Julie Weinberg, Director of Life and Health Products Division, New Mexico Office of Superintendent of Insurance
- Kim Holland, former Oklahoma Insurance Commissioner

These experts have the following suggestions.

1. Do your homework to understand the role of the insurance department and who else makes health policy in the state. If the commissioner was appointed by the governor, they may have constraints on their policy positions. Conduct research to find out their authority. Understanding their purview and their limitations will help your conversations stay on track. Research what programs are in place and who leads them.
    - In every state, the governor has a health policy expert on their cabinet; identify who that is. They will make recommendations on what health programs focus on, provide influence and help decide priorities.
    - Review and understand state-specific programs – there may be something available in addition to the Affordable Care Act that requires health plans to cover tobacco cessation benefits, like a benefit mandate or New Mexico's Continuous Quality Improvement program.
    - Understand what the insurance commissioner is working on – by following health policy in your state legislature, you will become aware of things that have been tasked to the insurance department, for example, work on a public option plan or changes to the health insurance marketplace.

2. Build a relationship with your insurance department or division:
    - Check with colleagues in other areas of the health department about their connections. For example, in New Mexico, the Office of Insurance works with the Health Department on a vaccine purchasing act that is written into statute. Also, the pandemic has opened channels of communication that were not there before.
    - Approach one of several people to forge a relationship. In other words, if you don't succeed, try again! Depending on a staff person's role, capacity, and personal interests, they may make time for you. For example, the Superintendent of the Office of Insurance in New Mexico was once a health services advisor for the U.S. Public Health Service – so they have a strong public health orientation.
    - If you cannot find a contact, go to the top. Reach out directly to the superintendent/ commissioner who should direct your inquiry to the person who can help. Most commissioners are approachable and accessible; they see themselves as consumer advocates. However, waiting until after your state's legislative session is complete, when insurance commissioners are not as busy, may increase your chances of receiving a timely response.
    - Engage your state health officer. Outreach from health department leadership to the department of insurance can sometimes facilitated connections. Do not be intimidated that their title likely means more than yours.
    - Be willing to work at the relationship. Focus on long-term objectives, as well as short-term gains. The first meeting you have is not likely to result in what you ultimately want. But if you invest the time now to create relationships and partnerships, over time, public health, insurance regulators and health plans will be able to work together on interests that overlap.

- Be sensitive to other demands on their time. This is particularly applicable during the legislative session.
- Bring them the best information you can. Gather surveys or other data, complaints about tobacco cessation coverage from patients/members or providers. Be prepared with data related to cessation coverage.
- Don't give up!

3. If you are having challenges engaging the insurance commissioner, think outside the box and enlist additional groups to forge the relationship.
    - Perhaps start with the governor's health policy lead.
    - Approach an insurance broker for an introduction to the insurance department.
    - Approach health plans directly. Carriers do, in general, pay attention to things from any state agency – even if not the regulator. It can be helpful for health department tobacco control staff to offer guidance to them on standards, expectations or best practice elements on what makes a good tobacco cessation program, even if not from a regulatory perspective. One way to approach this interaction is through a focus on data and data sharing. Insurance companies recognize the need for data collection and data analytics, and public health may have surveillance resources that are of interest to health plans or could be leveraged by plans, and vice versa. Public health data can help health plans understand their environment at a more macro level. Working collaboratively will take a little while, but most employer and insurers would really welcome the opportunity to have a dialogue and learn how they can be supportive of public health efforts.
    - Work with state advocacy groups who may have important relationships like state chapters of the American Lung Association and others tobacco control partners.

As part of our conversations, experts shared the list below of national organizations for potential partnerships. Many of these organizations have state-based or regionally-based chapters, and most of these organizations likely have representatives from your state – and even from your state government (the governor or insurance commissioner). For example, The National Alliance has about 50 coalitions across the country working to support and inform healthcare purchasing. Reach out to the organizations with a presence in your area and start building a relationship. Figure out how their goals and your goals overlap. It may be helpful to suggest presenting at a meeting, providing resources for them to distribute to members, or working together on a common issue.

- America's Health Insurance Plans (AHIP) – Convenes health plans across the country and also offers some programming that reaches the brokerage community.
- National Association of Insurance Commissioners (NAIC) – Convenes health insurance commissioners from each state.

- National Governors Association (NGA) – Convenes governors, often focusing on macro-level health issues.
- National Academy for State Health Policy (NASHP) – Convenes state health policymakers.
- National Business Group on Health (NBGH) – Convenes human resource and benefit managers and leaders from employers.
- National Alliance of Healthcare Purchaser Coalitions (National Alliance) – Convenes health care purchasers from mid and large-sized public and private employers.
- National Association of Health Underwriters (NAHU) – Convenes health insurance agents, brokers, consultants, and benefits professionals.

Conclusion

Learning about public and private insurance and which plans are regulated at the federal vs. state level creates an important foundation for state tobacco control programs that wish to understand cessation coverage available in the state. While every state is unique and has its own programs and environment, there are similarities in departments or divisions of insurance which can be leveraged to create partnerships that may ultimately lead to improved cessation coverage and access to benefits.

Acknowledgements

The American Lung Association thanks Julie Weinberg and Kim Holland for sharing their time and expertise and Michele Patarino for drafting the issue brief. This publication was supported by Cooperative Agreement Number 6NU38OT000292-04-02 funded by the Centers for Disease Control and Prevention. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the Centers for Disease Control and Prevention or the Department of Health and Human Services.

July 2022

[1] Stephen Babb et al., "Quitting Smoking Among Adults — United States, 2000–2015," *Morbidity and Mortality Weekly Report* 65 (2017), https://doi.org/10.15585/mmwr.mm6552a1.
[2] U.S. Department of Health and Human Services. Smoking Cessation. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2020.
[3] United States. Compilation of Patient Protection and Affordable Care Act : as Amended through November 1, 2010 Including Patient Protection and Affordable Care Act Health-Related Portions of the Health Care and Education Reconciliation Act of 2010. Washington :U.S. Government Printing Office, 2010.
[4] US Preventive Services Task Force. Interventions for Tobacco Smoking Cessation in Adults, Including Pregnant Persons: US Preventive Services Task Force Recommendation Statement. JAMA. 2021;325(3):265–279. doi:10.1001/jama.2020.25019

American Lung Association.

[5] Centers for Medicare and Medicaid Services. CCIIO. FAQs About Affordable Care Act Implementation (Part XIX). May 2, 2014. Accessed at: https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs19
[6] American Lung Association. Tobacco Surcharges. August 2019. Accessed at: lung.org/getmedia/b69045b1-0411-4876-9275-242e337201b0/tobacco-surcharges.pdf
[7] Monica E. Cornelius, "Tobacco Product Use Among Adults — United States, 2020," *Morbidity and Mortality Weekly Report* 71 (2022), https://doi.org/10.15585/mmwr.mm7111a1.
[8] Katherine Keisler-Starkey and Lisa N. Bunch, "Health Insurance Coverage in the United States: 2020," *United States Census Bureau* (2021) https://www.census.gov/library/publications/2021/demo/p60-274.html.
[9] Katherine Keisler-Starkey and Lisa N. Bunch, "Health Insurance Coverage in the United States: 2020."
[10] Kaiser Family Foundation et al., "2021 Employer Health Benefit Survey."
[11] Kaiser Family Foundation et al., "2021 Employer Health Benefit Survey," *Kaiser Family Foundation* (2021), https://files.kff.org/attachment/Report-Employer-Health-Benefits-2021-Annual-Survey.pdf.