Law and Economics: How does Swiss legislation implement risk equalization?

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In 1996, the Swiss law of social health insurance (KVG) implemented a risk equalization (RE) transfer among competing social health insurers. RE is an instrument designed to balance the high mean health care expenditures (HCE) of insurers with a comparably sick population on the one hand and the comparably low mean HCE of insurers with rather healthy enrollees on the other hand. RE should be designed in a way to prevent premiums of different insurers to reflect differences in their morbidity level while premium differences caused by differences in the efficiency of providing care should remain.

In Switzerland, the underlying mathematical RE formula has been significantly revised in 2012, 2017, 2019 and 2020, which called for corresponding changes in legislation (in law and ordonnance). All changes in the formula followed (more or less) the recommendations of health economic text books and they will not be further questioned here. Our goal is to compare the economic intention of the legislator with the codification by law. By doing so, we find several significant shortcomings. During the discussion of the RE reform in March 2014 the legislator eliminated formally and unintentionally the legal ground of the currently applied formula. The formula effective since 1.1.2017 that redistributes 10 billion CHF annually does not rest on legal grounds anymore since the law describes a substantially different RE formula. In other parts of the law, the RE formula prescribed in the law and described by ordonnance do not match. And finally, the detailed regulation of the federal office opens new opportunities for the insurer to circumvent RE regulation which is in direct contrast to law and legislator. All these problems arise because the RE reform is quite complex and the level of information of the legislating body (members of parliament and federal office) seems to be insufficient.

The question to be discussed is the following: How should and could economists contribute to a rational legislation process once a decision for an economic reform has passed?