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RATE INCREASE DISCLOSURE AND REVIEW PROPOSED RULE

The Center for Public Policy Priorities, La Fe Policy Research and Education Center, Texas Legal Services Center, and Texas Public Interest Research Group respectfully submitted the following comments to the U.S. Health and Human Services (HHS) Secretary Kathleen Sebelius in response to the notice of proposed rulemaking for Rate Increase and Disclosure Review.

Introduction

Along with other issue areas, our organizations work on increasing access to quality, affordable health insurance. Our work includes research and education on public policies to increase accountability and transparency of health insurance premiums in Texas.

With the issuance of this proposed rule, the Office of Consumer Information and Insurance Oversight (OCIO) reiterates the federal government's commitment to one of the Patient Protection and Affordable Care Act's (ACA) goals: expanding health insurance coverage by controlling costs. While the proposed rule gives consumers and regulators more information on proposed rates hikes, we urge HHS to strengthen the standards for effective state review to better protect consumers and help constrain the growth in health insurance rates.

Current Rate Review Authority and Practice in Texas

Texas law requires that all insurance rates be just, fair, and reasonable and prohibits rates that are confiscatory, excessive for the risks to which the rate applies, or unfairly discriminatory. Despite this statutory standard, current rate review practices in Texas are inadequate to protect consumers. Texas does not have a formal, comprehensive review process for individual or group rates and lacks a standardized reporting format for the rates that are filed. The Texas Department of Insurance (TDI) lacks authority to approve or deny rate increases in the individual, small group, and large group markets.

TDI currently reviews only a limited number of rate filings. HMOs must file rates, but HMO enrollment accounts for less than 20 percent of the fully insured market. Insurers that write individual coverage must file rate schedules; however, insurers are only required to file actuarial assumptions and justifications and TDI only reviews individual rates if the rate increase is over 50 percent in a 12-month period. Insurers do not file small or large group rates at all. TDI may review health insurance rates in response to a consumer complaint; however, only about 4 percent of consumer complaints about excessive premiums result in rate review by TDI.¹

Rate increases and review in Texas lack meaningful public disclosure and transparency. Neither carriers nor TDI must notify consumers of a pending or proposed rate increase filing. State law requires carriers to send policyholders written notice of a rate increase at least 60 days in advance for group coverage, but does not have a similar notice requirement for individual coverage. Texas does not allow for a consumer comment or review period related to proposed increases. TDI does not make a summary of health insurance rate increases or rate filings available to the public.

Although rate filings at TDI are technically subject to Texas' open records law, in practice, this information is not available to consumers. Information filed with TDI that is marked confidential or proprietary, which includes many rate filings, is exempted from disclosure unless Attorney General rules that the information should be released. At this point, insurers can sue to stop the release of the information. At least one insurer is currently suing to block the release of rate filing information to a consumer organization. The Center for Public Policy Priorities recently requested a summary table of rate increases over the last year showing the carrier, policy form, and percentage increase *only for filings that were not marked confidential*, and to date has been unable to obtain that information.

TDI was awarded a federal rate review grant that the agency plans to use to enhance rate review in the individual, small group, and large group markets and increase transparency for consumers.

Does Texas Have Effective Rate Review?

Based on the criteria for effective rate review in the proposed rule, it appears that Texas would not qualify as a state with effective rate review in the small group market. Texas does not currently receive or review rate filings for the small group market.

Based on current practice, it appears unlikely that Texas will qualify as a state with effective rate review in the individual market. While rates must be filed for individual insurance, actuarial justification is currently required and reviewed only when rate increases top 50 percent over 12 months. For rate increases under 50 percent, TDI does not receive the actuarial documentation that is needed to review the reasonableness of the assumptions used by an insurer in developing a rate request, the validity of the data, or the reliability of past projections submitted by the insurer.

TDI is in the process of enhancing its rate review processes using federal grant funding. It is possible that if Texas continues to seek federal funding for enhanced rate review and makes needed improvements to statute, regulations, and/or practices, it could qualify as a state with effective rate review in the individual and/or small group markets in the future.

Recommendations to Strengthen Criteria for Effective State Rate Review

We recognize the importance of involving state insurance commissioners in the oversight of health insurance issuers in their states, particularly with regard to insurance policy rate increases. Simultaneously, we recognize that a significant goal of the ACA is to slow the increase in health care spending. Limiting the rate of increase of health insurance premiums is an effective tool in that effort. However, under the proposed rule states will continue to be the primary overseers of proposed rate increases, therefore it is critical that states' rate review processes be rigorous and effective. The criteria for effective state review in the rule are not sufficient to ensure consumers in Texas and every state will benefit from robust state reviews that effectively help constrain the growth in rates. We therefore urge you to strengthen the criteria HHS employs when determining whether a state's rate review process is effective. We recommend that such a process is only considered effective if:

- The state insurance regulator has the authority to deny or reduce proposed rate increases before they go into effect. A state's ability to control the growth of premiums is substantially hampered if the state does not have prior approval authority to prevent unreasonable increases in premium costs. For effective review, prior approval authority should not be paired with a "deemer" that allows rate increases to go into effect if not denied within a certain time period. Authority should exist that ensures rate increases only go into effect after the state has determined they are reasonable.
- The state insurance regulator demonstrates that it has the capacity and willingness to conduct effective review. Simply having authority to approve and deny rate increases is not sufficient to ensure effective review; some states may have

adequate authority for effective review, but in practice merely rubberstamp proposed increases. States must have adequate staff capacity and a demonstrated record of having taken an action to disapprove or reduce a proposed rate increases in the past five years.

- All products by all carriers in a market are reviewed. For example, in Texas, small group HMO rates are filed, but small group PPO rates are not. If a state does not review rates for certain products or carriers within a market segment, state rate review related to those products/carriers should be considered ineffective and review carried out by federal regulators.
- Independent or on-staff state actuaries review the proposed rate increase using raw data that allows testing of the carrier's assumptions. Rates for group coverage are not filed in Texas, but small group carriers must submit an actuarial certification that rates comply with rating standards in state law. Such actuarial certifications do not allow regulators to review whether a rate is reasonable or test the actuary's assumptions. State regulators need the actuarial expertise to conduct an independent review of health plans' proposed rate increases to identify assumptions—or even mistakes—that could harm consumers. States that rely on actuarial certifications should have rate review deemed ineffective.
- The state regulator has authority and practices in place enabling it to collect sufficient data, including historical claims data, in standardized filing formats to enable a thorough review.
- The state makes written findings on all of the criteria that must be examined under the requirements of §154.301(a)(4), including any new criteria suggested by this comment. Requiring written findings on the reasonableness of proposed rate increases will ensure the state's process is rigorous and thorough.
- The state standard of review applied allows state regulators to balance actuarial soundness with consumer experiences in the state's health insurance market and consumer concerns regarding affordability. State rate review should consider the effect of rate increases on consumers' ability to maintain coverage, the carrier's history of rate increases, the broader solvency of the entire company, and the carrier's mission, if a nonprofit company.
- States have the authority to and in practice make all rate filings, full rate justification forms, and underlying data used to support filings readily available to the public online. States like Texas, where rate filing data is not available to the public by policy or in practice should not be considered to have effective rate review.
- The public has a meaningful opportunity to participate in the rate review process, whether through public hearings or a public comment period that occurs before the rate increase takes effect.
- Consumers receive adequate notice of proposed rate increases. To ensure that families and small businesses that bear the brunt of insurance rate increases have sufficient time to learn about the justification for the rate increase, participate in a public rate review process, shop around for other coverage, and/or make necessary budget adjustments, states should ensure that consumers get at least a 60-day advance notice of the proposed rate increase. States with inadequate consumer notice should not be considered to have effective rate review.

Thank you for the opportunity to provide comments. Strong state rate review systems backed up by strong federal review when needed will help achieve ACA's goal of slowing the growth of health care costs. To be truly effective, state rate review processes must not only provide for the prior approval of proposed rates, but also employ the necessary actuarial expertise and public input to adequately protect consumers from unjustified or excessive rate increases.

ENDNOTES

¹ Texas Department of Insurance, Grants to States for Health Insurance Premium Review application, July 1, 2010.

The Center for Public Policy Priorities is a nonpartisan, nonprofit policy institute committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans. We pursue this mission to achieve our vision for a BETTER TEXAS™. Learn more at <http://www.cppp.org>.

The La Fe Policy Research and Education Center works to continually improve the Bienestar (well-being) of Mexican Americans through policy analysis, education, leadership development, and civic involvement. Bienestar affirms our culture, community experience, values, and advocacy to achieve equality of opportunity through responsive social and health policies.

Texas Legal Services Center is a legal services program that provides state support to advocates of low-income people and individual support to low income people in need of legal services. Since 1989, Texas Legal Services Center has operated a hotline legal service to help low-income people with problems accessing or paying for health care.

The Texas Public Interest Research Group is a non-profit, non-partisan consumer advocacy organization that works to protect the citizens of Texas.