



American Cancer Society ☞ Children's Defense Fund/New York ☞ Community Service Society of New York ☞
Make The Road New York ☞ Metro New York Health Care for All Campaign
New Yorkers for Accessible Health Coverage ☞ New York Immigration Coalition
Public Policy and Education Fund of New York/Citizen Action of New York ☞ Raising Women's Voices

February 22, 2011

Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Attention: OCIIO-9999-P
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Sebelius:

Health Care for All New York (HCFANY) respectfully submits the following comments to the Department of Health and Human Services (HHS), Office of Consumer Information and Insurance Oversight (OCIIO) in response to the notice of proposed rule making, OCIIO-9999-P, Rate Increase and Disclosure Review. HCFANY is a statewide consumer advocacy coalition of more than 100 organizations, which seek to achieve affordable, quality health care for all New Yorkers.

With the issuance of this proposed rule, OCIIO 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. The 50 states have diverse, though perhaps conceptually similar rate review processes, and we commend OCIIO for balancing the interests of the states with the overarching goals of the ACA.

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. We therefore submit these comments to strengthen the criteria HHS employs when determining whether a state's rate review process is effective.

After a decade of reviewing rates after the fact of their increases through a file and use system, the New York State Legislature reinstated prior approval of insurance rate increases in



2010.¹ The Department of Insurance (SDOI) has already used this new authority to reduce rate increases by up to a third in many cases. The SDOI has also required insurance companies to re-write and re-issue misleading notices to consumers.²

Under New York’s prior approval law, before raising rates for an individual or small group policy (a policy covering between two and 50 employees), and any large group policies subject to community rating, the insurer must first submit a rate filing to the SDOI. The insurer must also send a written notice to each policy and certificate holder on or before the date when the rate filing is submitted. The notice must include information about how to comment on the rate increase, and the SDOI must establish a process for consumers to comment on the rate increase proposal. The SDOI may modify or disapprove the rate filing if it finds that the premiums are “unreasonable, excessive, inadequate, or unfairly discriminatory.” (N.Y. Insurance law § 3231(e)(1)(A).) The SDOI must base this determination on sound actuarial assumptions and methods, and provide the determination in writing between 30 and 60 days from the date the rate filing was submitted. The SDOI can ask for more information from the insurer, and such a request can extend the time available to the SDOI to complete the rate increase analysis. *Id.*

Based on the proposed federal criteria for effective state rate review, we believe that New York State’s prior approval law will qualify as an effective state rate review process.

While the 12 criteria currently in the Rate Increase Disclosure and Review: Proposed Rule provide some insight into the processes states employ to review proposed rate increases, HCFANY believes that these criteria do not go far enough to ensure transparency in state processes, adequate public participation or robust state reviews.

Transparency & Notification

Individual consumers and small businesses bear the brunt of insurance premium rate increases, so it is important they are aware of proposed rate increases before they go into effect. New York’s statute requires that insurers provide to the Superintendent, to subscribers, and post prominently on their internet websites, a justification for a premium increase proposal. We believe that an insurer’s internet posting should include all testimony and documents justifying the rate increase that are submitted to the State as part of the prior approval process. Because this information is very difficult for the average consumer to interpret, the insurer should be required to provide a summary including detailed explanations of the justification for the premium increase in language that can be understood by a consumer with a fourth-grade reading level. The insurer should be required to mail this summary and information about how to participate in a state’s respective rate review public comment process to every consumer affected by the proposed rate increase.

¹ Anemona Hartocollis, “Law Limits Rise in Health Insurance Rates,” New York Times, June 9, 2010.

² “Prior Approval Helps Hold Down Health Insurance Rate Increases,” New York State Department of Insurance News Release, October 21, 2010, <http://www.ins.state.ny.us/press/2010/p1010211.htm>.



Additionally, the regulations should require specific notification to patient advocacy groups of any proposed premium increases higher than the rate of medical inflation, and should require a broad public right of access to the detailed material included in the rate filings on such matters as the insurer's recent claims experience for the product in question and the trend factors and other factors bearing on the increase, with only the narrowest exceptions for proprietary information that can be used for competitive advantage. The presumption should be in favor of full public disclosure, so that advocacy groups and more sophisticated consumers can use that material to meaningfully analyze and comment on the proposed rate increase. Advocacy groups are able to interpret the complex insurance information and perform an additional watchdog function. In this way the public interest is more likely to be defended against egregious premium increases.

Public Participation

While it is important to evaluate rate increases on the basis of actuarial soundness, this analysis must be balanced against consumer experiences in the state's health insurance market and consumer concerns regarding affordability. We therefore believe a rate review process is effective only if it provides the public the opportunity to comment on the increase before it goes into effect. New York's new law provides a public comment period before rate increases may go into effect. While New York does not require it, we also believe that the annual review process for any rate increase above the rate of medical inflation should include a public hearing at the insurer's expense. Consumers who are affected by the premium increase should have an opportunity to speak about how the premium increase will affect them.

Robust State Rate Review Processes

The 12 factors currently in §154.301(a)(4) of the proposed rule inquire about the amount of information reviewed by state insurance agencies. However, they do not consider the quality of that review. A state rate review process is only effective if the decision-maker within the state insurance agency has the authority to disapprove or reduce proposed rate increases. A state's ability to control the growth of premiums is substantially hampered if the state does not have the authority to prevent unreasonable increases in premium costs. Moreover, like New York, states should have the authority to demand insurers refund overpayment when a rate increase is determined to be unreasonable.

We also recommend that the rule require states to have independent or on-staff state actuaries review the proposed rate increase. While some states require insurers to file actuarial certifications that the proposed rate increase meets state statutory and regulatory requirements, actuaries make subjective determinations and nuanced judgment calls³. As a result, states need the actuarial expertise to conduct an independent review of health plans' proposed rate increases to identify judgment calls – or even mistakes – that could harm consumers. In New York, SDOI staff actuaries review proposed rate increase.

³ Kaiser Family Foundation and Georgetown University Health Policy Institute. "Rate Review: Spotlight on State Efforts to Make Health Insurance More Affordable. December 2010. <http://www.kff.org/healthreform/upload/8122.pdf>



The rule should also require that a state make 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.

These comments are intended to strengthen the consumer protection components of the proposed rule in order to effectively implement the 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.

Thank you for considering our comments. If you have any questions, please contact Elisabeth Benjamin at ebenjamin@cssny.org or at (212)614-5461 or Carrie Tracy at ctracy@cssny.org or at (212)614-5401.

Sincerely,

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