

The Affordable Health Care Act's Annual Review of "Unreasonable" Increases in Premiums for Healthcare Coverage

On December 21, 2010, the Department of Health and Human Services (HHS), working in partnership with the States, proposed a new regulation to empower consumers, promote competition, encourage insurers to do more to control health care costs and discourage insurers from charging premiums that are unjustified. In 2011, health insurers will have to publicly disclose and justify premium rate increases of 10% or higher "to determine if the rate increase is unreasonable," under proposed federal regulations called for in the Affordable Care Act. The Affordable Care Act has already begun to help States strengthen or create rate review processes. On August 16, 2010, HHS awarded \$46 million to 45 states and the District of Columbia to help them improve their oversight of proposed health insurance rate increases. This is part of \$250 million that the health reform law makes available to States to take action against insurers seeking unreasonable rate hikes. This funding will help assure consumers in every State that any premium increases requested by their insurance company, regardless of the size, is justified. Under the new proposed HHS rule, which is slated to take effect July 1, 2011 any rate increase amounting to 10% or more in the individual and small-group markets would have to go through the review process, and health insurers will need to publicly disclose the proposed increase and documentation to justify it. Large-group products and plans that are "grandfathered" under the reform law, are exempt.

The proposed regulation will ensure that large rate increases in all States will be thoroughly reviewed.

The proposed regulation will:

- In 2011, require that all insurers seeking rate increases of 10 percent threshold or more in the individual and small group market publicly disclose the proposed increases and the justification for them. Such increases are not presumed unreasonable, but will be analyzed to determine whether they are unreasonable.
- After 2011, a State-specific threshold will be set for disclosure of rate increases, using data and trends that better reflect cost trends particular to that State.
- Under the proposed regulation, States with effective rate review systems would conduct the reviews. If a State lacks the resources or authority to do thorough actuarial reviews, HHS would conduct them. Meanwhile, HHS will continue to make resources available to States to strengthen their rate review processes.

Whether performed by States or HHS, information about the outcome of all reviews for increases above 10 percent, along with justification provided by insurance companies for those increases determined to be unreasonable, will be posted on the HHS website. The insurance plan will also have to make its justification for a rate increase available on its own website.

After 2011, state-specific thresholds would be set using data and trends that better reflect cost trends particular to each state. Insurance company's justifications for unreasonable increases will be posted on HealthCare.gov and the insurance plan's website.

In 2014, the Affordable Care Act empowers states to exclude health plans that show a pattern of excessive or unjustified premium increases from the new health insurance exchanges.

This new proposed rate review regulation will also work in conjunction with the medical loss ratio regulation released on November 22, 2010. The medical loss ratio regulation ensures that premiums are being spent on health care and quality-related costs, not administrative costs and executive salaries.

These two provisions of the Affordable Care Act work together to assure consumers that any increase in their premium is reasonable and that their premium dollars are being spent on their medical care.

The proposed regulation will help safeguard consumers from unreasonably high rate increases by providing consumers with detailed information on proposed increases. Disclosing proposed increases, along with the insurer's justification, would shed light on industry pricing practices that some experts believe have led to unnecessarily high prices. This unprecedented new transparency in the health insurance market will promote competition, encourage insurers to do more to control health care costs and discourage insurers from charging rates which are unjustified.

Read the news release on the proposed rule at www.HealthCare.gov/news/newsreleases/index.html. Find links to the regulation and other information about rate review at www.hhs.gov/ociio/initiative/index.html.

Applicability

The requirements of this proposed regulation would generally be applicable to all health insurance issuers offering small group or individual health insurance coverage in a State. Section 2794 of the PHS Act does not apply to grandfathered health plan coverage. In addition, insurance coverage that meets the "excepted benefits" definition set forth in section 2791© of the PHS Act and 45 CFR 144.103 would not be subject to these proposed regulations awaiting further comments.

Criteria used for an effective rate review will include analyses of at least the following twelve areas that typically impact rates:

- Medical trend changes by major service categories
- Utilization changes by major service categories
- Cost –sharing changes by major service categories
- Benefit changes
- Changes in enrollee risk profile
- Impact of over-or-under estimate medical trend in previous years on current rate
- Reserve Needs
- Administrative Costs related to programs that improve healthcare quality
- Other administrative costs
- Applicable taxes, licensing or regulatory fees
- Medical loss ratio
- The health insurance issuer's risk based capital status relative to national standards

Regulator Costs

HHS estimates that issuers would incur approximately \$10 to \$15 million in one-time administrative costs and \$4 to \$4.5 million in annual ongoing administrative costs related to complying with the requirements of this proposed rule from 2011 through 2013.