



**COMMENTS to the Department of Health and Human Services, Office of Consumer
Information and Insurance Oversight
Rate Increase Disclosure and Review: Proposed Rule
OCIIO-9999-P
by Ohio Consumers for Health Coverage
February 22, 2011**

Ohio Consumers for Healthcare Coverage 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 rulemaking, OCIIO-9999-P, Rate Increase and Disclosure Review.

Ohio Consumers for Health Coverage (OCHC) is a coalition uniting the consumer voice with the goal of achieving affordable, high quality health care for all. OCHC, with a Leadership Team of 16 consumer organizations, combines the forces of tens of thousands of health care consumers. Our organizational membership is diverse, representing both those with illness and those in good health, both insured and uninsured, those with resources, and those of limited means

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. We commend OCIIO for undertaking this challenging task.

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. In addition, we believe that HHS does not go far enough in its determination to review rates, and not premiums, and we will discuss that as well.

The Ohio Department of Insurance (ODI) has authority to review and approve insurer requests for rate increases, and the kind of review varies by the market. In the individual market, all rates are subject to the prior approval of ODI. In the small group market, rates are submitted on a "file and use" basis. All small group rate submissions are reviewed by the Department for compliance with Ohio Revised Code. Carriers may have to make changes to rates if non-compliance is found. In addition, ODI reviews rate methodologies used by carriers in the large group market.

While ODI has a strong staff with actuarial expertise, the process is not very transparent to consumers. Consumers may come into ODI's offices and review the Electronic Rate and Form Filing system (SERFF). However, ODI does not maintain a system of providing notice to interested parties that a rate increase request has been filed, either via the web or by e-mail.

Through ACA, ODI requested and received a grant to enhance its rate review process. Among the goals ODI articulated in its request for these funds is an intention to develop a consumer-friendly web presence to facilitate consumer's ability to access and understand rate filings.

While it is unclear at this time whether Ohio's process would qualify as effective under the proposed rule, we are concerned that the proposed 12 criteria do not sufficiently ensure that consumers in all states can be confident of a thorough, open and publicly accessible evaluation of proposed rate increases. We detail below some of the changes that we would like to see.

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. We therefore recommend an effective rate review must also require:

- Sixty days notice to the insured of the rate increase. This is necessary to allow them to search for alternative coverage.
- The prompt posting of notice on the State's website that a rate increase request has been filed, regardless of the type of review that is done (i.e. includes prior rate review and "file and use."). Ohio consumers should have an efficient and effective way to monitor rate increase requests. This should be displayed both chronologically by filing date and categorically by carrier.
- In addition to notice, the State should be required to post a consumer-friendly summary of the insurance carrier's rate increase request, including a description of the factors triggering the rate increase, and all supporting documents that are not confidential.
- The regulations should be clarified to assure that the FOIA definition of "confidential" in regards to insurance documents cannot be used to engage in broad redactions of data necessary for an understanding of the rate increase. Families USA, Health Care for America Now, and other national organizations lay this argument out well in its comments, and we would just highlight one part of those. A frequent argument for protection of documents by most industries is that the revelation of the data will result in harm to their competitive position. However, we are moving toward a period of greater uniformity in what is expected of insurance companies nationwide. Much of the information will be required to meet other requirements of the statute, such as the medical loss ratio or risk adjustment calculations.

Public Participation

HHS invited comments on whether a public participation process should be required as an element of an effective review. We strongly believe that it should be. No one has a stronger interest in holding down rates than the people who are paying them. Consumers should have access to the documents that would permit them to examine whether the rate increase is justifiable based on all relevant factors, whether that is medical trend, increase in brokers fees,

increase in utilization, etc. The presence of a strong consumer voice in the process will assure that the reviewing agency is prepared to require documented justification of the assumptions underlying the requested increase.

The consumer can also present the reviewer with data on the affordability of rate increase. We urge both that an effective rate review allows for a public hearing to be held on proposed rate increases and provides for a public comment period before rate increases may go into effect.

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. To ensure that state rate review processes are robust and thorough, we recommend the following

- Ohio takes into consideration in its rate review many, if not most, of the items that HHS lists in its 12 criteria to determine an effective rate review.¹ Our concern is that the insurance company be required to produce documentation underlying the assumptions that it presents. For example, if an insurance carrier suggests that increases in brokers' fees are a part of the basis for an increase in rates, the carrier should be required to provide the total and average fees it paid brokers in the base year, as well as provide evidence that the anticipated fee increase is actually going to happen. We support the requirement that the state collect and review data showing how past projections related to actual experience. The standard should also specify that at a minimum, the data presented by the insurance company include historical claims experience data for at least five years preceding the proposed rate increase and specific data to support any adjustments or assumptions that cause the projected loss trend to deviate significantly from historical patterns. It should also include underlying data supporting all rating factors applied to individual policyholders or groups and information showing how the rate increase was distributed across risk categories.

- The reviewer should be required to take into consideration the surplus maintained by the

¹ For ease of reference, here are the twelve factors:

1. Medical trend changes by major service categories;
2. Utilization changes by major service categories;
3. Cost-sharing changes by major service categories;
4. Benefit changes;
5. Changes in enrollee risk profile;
6. Impact of over- or under-estimate of medical trend in previous years on the current rate;
7. Reserve needs;
8. Administrative costs related to programs that improve health care quality;
9. Other administrative costs;
10. Applicable taxes, licensing or regulatory fees;
11. Medical loss ratio; and
12. The health insurance issuer's risk based capital status relative to national standards

insurance carrier that is required as a condition of solvency. ODI does not consider whether surpluses held by carriers are excessive in the rate review process. ODI, as we understand it, reviews risk based capital levels during other routine reviews of insurance carriers as part of its effort to make sure that insurance carriers will remain solvent, but regards the consideration of risk based capital levels as not appropriate to the rate review process. OCHC, however, believes that surpluses are an important factor in correctly deciding rates. Ohioans are not well served if they are paying higher rates (or as is often the case, dropping their insurance) when invested surplus levels are increasing the overall availability of funds from which claims can be paid.

- When reviewing administrative costs as required by §154.301(a)(4)(viii), the state should be required to consider executive compensation levels. This needs to be more explicitly spelled out in the regulations. It is included in the disclosure form that was provided to the states. Executive compensation is an important indicator to both regulators and consumers of whether a rate request is reasonable. When consumers are being asked to pay higher premiums, they should be able to see how their hard-earned dollars are being spent, and understand both the extent to which those dollars are being used to help them continue to be healthy productive participants in society, and the extent to which they are being used to support excessive executive compensation.
- States, including Ohio, should be required to use prior review in the small group market as well as the individual market to be considered to have effective rate review.

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 examine the data underlying the carrier's assumptions and allow public input before the rate is approved to adequately protect consumers from unjustified or excessive rate increases.

Expanding the reach of these regulations.

Premiums need to be reviewed, not just rates

The focus of the regulations is on the rate increase, not the premium increase. Often a rate increase looks very different from the premium increase that follows. A consumer with a 30 percent premium increase may find that one-third of that premium increase is due to the underlying rate increase, while two thirds is due to other factors. The same is true with a small business.

These proposed regulations take great strides in improving accountability for rate increases; however, they fail to provide in a straightforward way tools for individuals to better understand and respond to individual premium increases. For example, we urge the Secretary to require for a rate review process to be effective, that a State must require insurance carriers to provide insured individuals and small businesses with notice of a premium increase that describes, in

plain language, both the factors triggering the increase and the extent of the increase attributed to each of the factors. These factors will include such items as the individual's or small business' change in risk position, age progression, or claims history.

We again concur with Families USA, HCAN and the other national organizations in their comments relative to Section 154.200 (b) which provides that whether an insurer meets or exceeds the review threshold is calculated based on the weighted average increase for all enrollees. We are concerned that this will mask very large increases that certain enrollees may experience if, for example, they have moved to a new age band at the same time that their insurer has received a general rate increase; or if the insurer alters its rate structure in addition to increasing its overall rates; or if the insurer does not use bands but instead calculates a weighted increase for a block of business and then uses rating factors to distribute the increase across enrollees. Large increases for particular segments of the enrolled population or for individuals subject to a new rate band can cause certain groups of enrollees to drop coverage and should thus be examined.

This could be addressed by adopting a separate threshold for what is considered a reasonable rate increase for any particular individual or small business. For example, in addition to reviewing weighted average increases of 10 percent, the Secretary could require that any increase that causes an individual enrollee's (including small business) premiums to rise more than 15 percent is on its face unreasonable, and therefore subject to review.

Summary

In summation, we commend the Secretary for proposing rate review regulations that strike a balance between the traditional prerogative of the States to review rates and the requirements of the ACA. We are concerned, however, that the standards that will be used to determine if a State has an effective rate review process do not probe as deeply as is needed to protect consumers.

We propose:

- More effective requirements for States to provide consumers notice of rate increases;
- Greater transparency, including requiring States to post notices of increases, explanatory narratives and underlying documents to the State's web site;
- A meaningful opportunity for the public to participate in rate review proceedings;
- To have an effective review process States be required to consider additional factors in setting rates, including
 - a. surpluses and executive compensation;
 - b. the affordability of the premium in addition to the actuarial soundness of the rate;
 - c. The underlying data on which rate increases are based;
- HHS expands the reach of these regulations to define an unreasonable rate increase based not only on a weighted average of 10 percent, but also on the premiums of individuals and small business, with a somewhat higher threshold.

Thank you for this opportunity to submit comments.

Respectfully submitted,

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