



LEGISLATIVE BRIEF

HHS Issues Final Rule to Control Premium Increases

The Department of Health and Human Services (HHS) has issued a final regulation aimed at controlling large health insurance premium increases. The rule, which was issued on May 19, 2011, provides that:

- Rate increases of **10 percent or more** by insurers in the **small group and individual markets** must be reviewed by state or federal officials.
- Insurance companies will be required to justify significant rate increases and provide information to consumers about the reasons for the increases.
- Grandfathered plans and excepted benefits (such as separate dental-only and vision-only plans) do not have to meet these requirements.

This The Wright Group Services Legislative Brief provides a summary of the HHS final rule, which is effective **Sept. 1, 2011**. For a copy of the rule, see www.ofr.gov/OFRUpload/OFRData/2011-12631_PI.pdf.

BACKGROUND

Under health care reform, HHS was required to establish a process for the annual review of “unreasonable increases in premiums for health insurance coverage.” The reform statute provides that the process must require health insurance issuers to submit justifications for unreasonable premium increases to HHS and the applicable state prior to the implementation of the increases.

The final rule implements section 2794 of the Public Health Service Act (PHSA), which was added by section 1003 of the Patient Protection and Affordable Care Act (PPACA).

It establishes the requirements for health insurance issuers offering health insurance coverage in the small group or individual markets to report information concerning unreasonable rate increases to the Centers for Medicare & Medicaid Services (CMS). It also sets the process for determining whether the rate increases are unreasonable.

FINAL RULE

Applicability

The final rule regarding rate increases applies to insurers in the small group and individual markets. However, it does not apply to grandfathered health plan coverage or to excepted benefits. Excepted benefits include things like liability insurance, workers’ compensation insurance, limited scope dental or vision benefits, long-term care or nursing home benefits and hospital indemnity insurance.

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Rate Review

Effective **Sept. 1, 2011**, insurers seeking rate increases of **10 percent or more** for non-grandfathered plans in the individual and small group markets must publicly disclose the proposed increases, along with justification for the increases.

Starting **Sept. 1, 2012**, the 10 percent threshold will be replaced with a **state-specific threshold** to reflect insurance and health care cost trends particular to that state. HHS will work with states to develop the applicable thresholds.

The increases will be reviewed by either state or federal experts to determine whether they are unreasonable. States with effective rate review systems will conduct the reviews, but if a state does not have the resources or authority to conduct actuarial reviews, CMS will conduct them. HHS expects that most states will be able to conduct their own reviews and will provide resources to states to help strengthen their rate review processes.

An increase is considered unreasonable if it is found to be excessive, unjustified or unfairly discriminatory under state or federal standards. The final rule clarifies the meanings of these terms:

- **Excessive rate increases** cause the premium charged for the health insurance coverage to be unreasonably high in relation to the benefits provided under the coverage.
- **Unjustified rate increases** exist if the health insurance issuer provides data or documentation to CMS in connection with the increase that is incomplete, inadequate or otherwise does not provide a basis upon which the reasonableness of an increase may be determined.
- **Unfairly discriminatory rate increases** result in premium differences between insureds within similar risk categories that are not permissible under applicable state law or, in the absence of an applicable state law, do not reasonably correspond to differences in expected costs.

Information for Consumers

The final rule is designed to make more information available to consumers regarding premium increases. It requires that information about rate increases be provided in a simple and easy-to-understand format.

Details on the outcome of all reviews for increases at or above 10 percent will be posted on the HHS website, www.healthcare.gov. The information will include a summary of the factors driving the rate increases, along with a justification provided by insurance companies for those increases determined to be unreasonable. The justification will also have to be posted on the insurance company's website.

HHS will also publish consumer-friendly forms that insurers must use to propose rate increases and to inform consumers about the proposed increases. The forms will include basic background information about the insurance company's decision to increase rates and information about the increase itself. For more information on the proposed forms, see www.healthcare.gov/news/blog/ratereview03072011a.html.

This The Wright Group Services Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

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