



February 22, 2011

The Honorable Kathleen Sebelius  
Secretary  
Department of Health and Human Services  
ATTN: Office of Consumer Information and Insurance Oversight  
Room 445G, Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

**RE: Rate Increase Disclosure and Review: Proposed Rule OCIIO-9999-P**

Dear Secretary Sebelius:

Kentucky Voices for Health 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.

Kentucky Voices for Health is a broad coalition of nearly 100 organizations working to improve Kentuckians' health and health care coverage. The coalition's leadership team is composed of representatives from AARP Kentucky, Advocacy Action Network, American Cancer Society, American Heart Association, American Lung Association, Catholic Conference of Kentucky, Covering Kentucky Kids and Families, Kentucky Council of Churches, Kentucky Equal Justice Center, the Kentucky Injury Prevention and Research Center, and Kentucky Youth Advocates. Kentucky Voices for Health receives grant funding from the Public Welfare Foundation through the Foundation for a Healthy Kentucky.

This proposed rule reiterates the federal government's commitment to one of the Patient Protection and Affordable Care Act's (ACA) most important goals: expanding health insurance coverage by controlling costs. Each state does not have the same rate review process and we commend OCIIO for balancing the interests of the states with the overarching goals of the ACA.

We recognize the key role state insurance commissioners play 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. 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.

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## Kentucky's Rate Review Process

Under Kentucky law (KRS 304.17A-095), health insurers must file rates with the Kentucky Department of Insurance (with a copy to the Kentucky Attorney General) prior to being implemented. The Commissioner of Insurance has 60 days after a rate filing to approve or disapprove the filing. In approving or disapproving a filing, the Commissioner is required to consider:

- Whether the benefits provided are reasonable in relation to the premium or fee charged;
- Whether the fees paid to providers for the covered services are reasonable in relation to the premium or fee charged;
- Previous premium rates or fees for the policies or contracts to which the filing applies;
- The effect of the rate or rate increase on policyholders, enrollees, and subscribers;
- Whether the rates, fees, dues, or other charges are excessive, inadequate, or unfairly discriminatory;
- The effect on the rates of any assessment made under KRS 304.17B-021 (for Kentucky's high risk pool); and
- Other factors as deemed relevant by the commissioner.

Currently, if the proposed rate increase meets state required minimum loss ratio guarantees (60% for the individual market; 70% for the small group market for groups between 2-10; or 75% for the small group market for groups between 11-50), then the rate may be implemented without review.

The Commissioner may hold a public hearing on a rate filing, at the request of the Attorney General acting as a consumer advocate, to determine whether the filing complies with the criteria set forth above. The Commissioner may withdraw approval for rates and order a refund of any overcharges as a result of a public hearing.

Given that insurers may begin using rates before they have been reviewed and approved by the Commissioner of Insurance, it is unclear whether Kentucky's process would qualify as effective under the proposed rule. We are also concerned that the proposed 12 criteria for effective rate review in the rule do not sufficiently ensure that consumers can be confident of a thorough, open and publicly accessible evaluation of proposed rate increases. We urge you to consider the following additional requirements.

- **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:
  1. Proposed rate increases to be filed with the governing state insurance agency 60 days before they may go into effect.
  2. Proposed rate increases to be disclosed directly to plan policyholders 60 days before they may go into effect.
  3. All rate proposal documents to be posted on a publicly accessible website before they can go into effect.

- **Public Participation:** While it is important to evaluate rate increases on the basis of actuarial soundness, this analysis must be balanced against consumer experiences and concerns regarding affordability. In Kentucky, public hearings are only held if requested by the Attorney General or ordered by the Commissioner after the rates go into effect. We therefore believe a rate review process is only effective if it:
  1. Allows for a public hearing to be held on **proposed** rate increases.
  2. Provides a public comment period before rate increases may go into effect.
  
- **Robust State Rate Review Processes:** To ensure that state rate review processes are robust and thorough, we recommend that such a process is only effective if:
  1. 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.
  2. HHS inquires whether the state insurance agency has disapproved or reduced any proposed rate increases in the past five years. While states may appear to have strong regulatory oversight on paper, the process may merely be a tool to rubberstamp any proposed rate increase submitted.
  3. Independent or on-staff state actuaries are required to review the proposed rate increase. 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. Without additional resources many states will have difficulty accomplishing this review. Several states intend to use their rate review improvement grants to hire actuaries.
  4. 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.

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.

Respectfully submitted,



Jodi Mitchell  
Executive Director