

Rate Review Instructions Manual

State Rate Review Determination Instructions and Reporting Requirements

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1. OVERVIEW

Section 2794 of the Public Health Service Act (PHS Act), as added by Section 1003 of the Patient Protection and Affordable Care Act (Affordable Care Act), establishes a process for the review of an unreasonable rate increases for health insurance coverage. On May 19, 2011, the Center for Medicaid and Medicare Services (CMS) issued a final rule, the “Rate Increase Disclosure and Review” (Rate Review Regulation) (codified at 45 C.F.R. §§ 154.101-154.301) implementing section 2794 of the PHS Act.

This manual provides the technical instructions and the process for the States to review rates submitted by health insurance issuers pursuant to section 2794 of the PHS Act and the Rate Review Regulation.

2. PROCESS

2.1 Timing and Sequence of State Rate Review Process

Under the Rate Review Regulation, rate increases for a specific product in the individual or small group market that meet or exceed the “subject to review” threshold will be reviewed by States or CMS.¹ Whether the State or CMS reviews a health insurance issuer’s rate increase depends on whether the States’ existing rate review practices meet the Effective Rate Review Program standards outlined in 45 C.F.R. § 154.301.

On July 1, 2011, CMS released its determinations of States with Effective Rate Review Programs.² CMS made these determinations by market and by product type. Specifically, the CMS determinations are made for each of the following products within the individual and small group markets:

Individual Market Products

- Health service corporations (HSC), nonprofit and similar products;
- Health maintenance organizations (HMO) products;
- All other commercial products;

Small Group Market Products

- Health service corporations (HSC), nonprofit and similar products;
- Health maintenance organizations (HMO) products; and
- All other commercial products.

The CMS effective rate review determinations for each State by market and product are available at http://cciio.cms.gov/resources/factsheets/rate_review_fact_sheet.html.

The Rate Review Regulation requires all health insurance issuers (Issuer) to provide a Preliminary Justification for all rate increases that meet or exceed the “subject to review”

¹ 45 C.F.R. § 154.210.

² CMS may revise these determinations based on changes in States’ rate review practices. 45 C.F.R. § 154.301(d).

threshold. All States will have access to their Issuers' Preliminary Justification submissions via the Rate Review Reporting Module in the Health Insurance Oversight System (HIOS). The HIOS system allows each State to see a full summary of all of the Issuers' Preliminary Justifications filed for their State in the HIOS system. CMS will provide the State regulators with the HIOS url and login information, following user registration by each individual accessing the HIOS system.

States will receive an e-mail notification each time a Preliminary Justification is uploaded into the HIOS system. The e-mail will provide basic information about the Issuer that filed the Preliminary Justification.

States with Effective Rate Review Programs will apply their existing rate review processes to conduct reviews of proposed rate increases.³ The State is required to enter the outcome of its review in HIOS within five business days after completion of the review.

CMS will post the Preliminary Justification and information related to the State or CMS review and determination on healthcare.gov and the CMS.gov websites. Additionally, Issuers are required to post on their websites their Final Justification explaining why they are electing to implement a rate increase that a State or CMS has determined is unreasonable. The Final Justification is not required in cases where Issuers elect to withdraw the rate increase after a determination that it is unreasonable.

2.2 Applicability

The rate review reporting requirements apply to Issuers offering health insurance coverage in the individual market and small group market.⁴ The requirements of this part do not apply to grandfathered health plan coverage (as defined in 45 C.F.R. § 147.140), or to excepted benefits as described in section 2791(c) of the PHS Act.

States will receive e-mail notifications for all rate increases proposed for use in their States that are reported by Issuers in the HIOS system. Additionally, each State will be able to access a listing of all of its rate increases under review in the HIOS system. States should notify CMS of any applicable rate increases filed in their States that have not been reported by Issuers in HIOS.

2.3 Timing of Preliminary Justification Submissions

The effective date of the rate review reporting requirements is September 1, 2011. The date on which Issuers must begin submitting Preliminary Justifications for rate increases in each State depends on whether the State has a rate filing requirement.

- **States with Rate Filing Requirements:** Issuers must submit the Preliminary Justification in HIOS on the same date that the rate filing is submitted to the State. Thus, Issuers must provide a Preliminary Justification for any rate increases filed on or after September 1, 2011 that meet or exceed the subject to review threshold.

³ 45 C.F.R. § 154.301(a).

⁴ 45 C.F.R. § 154.101(a).

- **States without Rate Filing Requirements:** Issuers must submit the Preliminary Justification in HIOS prior to implementing the rate increase. Issuers must provide a Preliminary Justification for any rate increases effective on or after September 1, 2011 that meet or exceed the subject to review threshold.

2.4 State Rate Review Determinations

Issuers must complete an attestation step as part of the Preliminary Justification upload process. Once that happens, the review determination functions in HIOS are enabled for those records. States will not be able to review Preliminary Justification submissions until after the Issuer has attested to the rate increase data it has submitted. States will receive automatic e-mail notifications when Issuers have attested to a Preliminary Justification for an increase to be implemented in their States. Each State with an Effective Rate Review Program is required to submit the result of its review of every proposed rate increase for which it has received a notification e-mail. In HIOS, pre-attestation and attested records can be identified by the record status field (new records are labeled as either ‘pre-attestation’ or ‘record attested’). States must provide their determinations within five business days of the completion of their review.

2.4.1 Determination Selection

For each review of a rate increase that is subject to review, States must select the determination description from the list below that best describes the outcome of the review:

1. **Unreasonable Rate Increase**
2. **Unreasonable Rate Increase (Modified)**
3. **Unreasonable Rate Increase (Rejected By State)**
4. **Not Unreasonable**
5. **Not Unreasonable (Modified)**
6. **Withdrawn Prior to Determination**

2.4.1.1 Unreasonable and Not Unreasonable Determinations

If a State completes a review and the Issuer does not make any modification to the proposed increase during the review process, the State must assign an “Unreasonable Rate Increase” or “Not Unreasonable” determination to the rate increase. The State will base its determination of “Unreasonable Rate Increase” or “Not Unreasonable” on the State’s existing standards for evaluating rate increases.

Unreasonable Rate Increase (Modified) and Not Unreasonable (Modified)

If an Issuer modifies a rate increase while the State’s review is in progress, the State must enter an “Unreasonable Rate Increase (Modified)” or “Not Unreasonable (Modified)” determination in HIOS. If a State is reviewing a rate increase, Issuers are not required to enter their modifications to filings in HIOS (i.e., they are not required to amend their Preliminary Justification submissions). Thus, States must use one of the “Modified” determinations to indicate that their determination is based on their review of a modified rate increase amount. When States enter an “Unreasonable Rate Increase (Modified)” or “Not Unreasonable (Modified)” determination in HIOS, HIOS will require the reviewer to indicate the modified rate increase amount.

2.4.1.2 Unreasonable Rate Increase (Rejected by State)

In States that may reject an Issuer's proposed rate increase, the State may select "Unreasonable Rate Increase (Rejected by State)" as the rate determination.

2.4.1.3 Withdrawn Prior to Determination

States must choose the "Withdrawn Prior to Determination" option if an Issuer withdraws an increase prior to the completion of a State's review.

2.4.2 Description of the Review Findings and Determination

In addition to entering rate determinations into HIOS, States must also provide "a brief explanation of how its analysis of the relevant factors set forth in §154.301(a)(3) caused it to arrive at that determination."⁵ States should use the following guidelines for preparing their review findings:

- The description should be non-technical and consumer-oriented. In general, the description should not exceed two to three paragraphs.
- The description should describe any changes to the rate increase amount or effective date.
- The description should provide the State's review determination (e.g., Unreasonable, Not Unreasonable) and should explain the State's final disposition of the rate increase (denied, approved, etc.).
- The description should provide a basic explanation of the relevant review findings that formed the basis of the review determination including an analysis of the relevant factors:
 - The reasonableness of the assumptions used by the Issuer to develop the proposed rate increase and the validity of the historical data underlying the assumptions; and
 - The Issuer's data related to past projections and actual experience.⁶

States do not have to enter a description of the review findings and determination when "Withdrawn Prior to Determination" is selected as the determination in HIOS. The description of the review findings and determination entered into HIOS will be posted on Healthcare.gov and CMS.gov.

2.5 Preliminary Justification Aggregation

The Rate Review Regulation provides guidelines for the extent to which products may be aggregated on the Preliminary Justification. As these guidelines may differ from existing State rate filing policies, the aggregation of products in an individual Preliminary Justification may vary from the aggregation of products in a State rate filing.

The Rate Review Regulation requires Issuers to identify and report on rate increases that are subject to review at the product level. The Rate Review Regulation defines the term 'product' as a package of health insurance coverage benefits with a discrete set of rating and pricing

⁵ 45 C.F.R. § 154.210(b)(2).

⁶ 45 C.F.R. § 154.301(a)(3).

methodologies that an Issuer offers in a State for which a rate increase is being requested.⁷ If an Issuer has a rate increase that meets or exceeds the reporting threshold for multiple products, the Issuer may submit a single Preliminary Justification for the combination of those products, provided that: 1) the experience of all combined products has been pooled to calculate the rate increases; and, 2) the rate increase is the same across all combined products. Separate Preliminary Justifications must be submitted for products that do not meet both of these criteria.

A single State rate filing might correspond to more than one Preliminary Justification. For example, if a State allows matrix filings for multiple products with unique experience, an Issuer would have to provide a separate Preliminary Justification for each product that meets or exceeds the subject to review threshold.

If multiple Preliminary Justifications exist for a single rate filing, States will be required to enter a review determination for each Preliminary Justification. Additionally, as discussed in Section 1.2 of this manual, the Rate Review Regulation does not apply to grandfathered plans. Thus, to the extent that Issuers combine non-grandfathered and grandfathered products in a single rate filing, the Preliminary Justification(s) in HIOS may not capture all of the products included in a rate filing.

2.6 CMS Monitoring of Preliminary Justifications

CMS will perform ongoing quality control of all of the Preliminary Justifications submitted in HIOS. If CMS identifies a deficiency in a Preliminary Justification, CMS may require an Issuer to submit a new Preliminary Justification. In these cases, CMS will assign a determination status of “Withdrawn Prior to Determination” to the initial Preliminary Justification. The updated Preliminary Justification submission will appear in HIOS as a separate new record. CMS will notify States via e-mail when a Preliminary Justification is withdrawn from HIOS due to deficiencies.

States are encouraged to report any Preliminary Justification errors, as well as any inconsistencies with State rate filings, in order to help ensure that consumers are receiving accurate rate increase information.

2.7 State Rate Review Web-Posting and Public Disclosure

The Rate Review Regulation requirements for Effective Rate Review Programs require States to post information on all of the rate increases that are reviewed under this program and to provide the public with the opportunity to comment on these rate increases.

In order to satisfy this requirement, States must:

1. Post on its web site, at minimum, the Preliminary Justifications, or a link to the Preliminary Justification postings on a CMS web site; and
2. Provide a medium by which consumers can comment on proposed rate increases by providing a phone number, e-mail address, website, or public hearing for submission of comments.

⁷ 45 C.F.R. § 154.102.

This requirement may be satisfied if a State already has a mechanism for web-posting and soliciting comments for all rate increases.

2.8 CMS Monitoring and Oversight of State Rate Review Determinations

The Rate Review Regulation states that CMS may revise its determination that a State has an Effective Rate Review Program if the State fails to comply with the Effective Rate Review Program requirements.⁸

⁸ 45 C.F.R. § 154.301(d).