

Consumers Union

April 23, 2010

Superintendent Morris J. Chavez
Division of Insurance
New Mexico Public Regulation Commission
P.E.R.A. Bldg., 4th Floor
1120 Paseo de Peralta
Santa Fe, New Mexico 87501

Dear Superintendent Chavez:

Consumers Union of United States, Inc. (CU), the nonprofit publisher of Consumer Reports, submits this public comment to the New Mexico Public Regulation Commission, Division of Insurance to oppose the average 24.6% premium rate increase that Blue Cross Blue Shield of New Mexico (BCBSNM) seeks to impose on New Mexicans insured in the company's individual market plans.

CU is a national nonprofit organization whose mission is to work for a fair, just, and safe marketplace for all consumers. As part of its mission, CU strives to maintain and increase access to affordable, quality health care.

CU urges the Superintendent to overturn the Division's approval of the BCBSNM 2010 rate increases. They will pose an extreme hardship on New Mexico's most vulnerable healthcare consumers, those insured in the individual market. These increases are largely the result of BCBSNM's unfair and discriminatory practice of closing off higher risk individuals into segregated blocks of business. In addition, the need for these increases is unsubstantiated in the company's rate filings, and the filings raise a number of questions regarding BCBSNM's calculation of predicted medical costs and expenses.

Further, denying these rate increases poses no threat of insolvency to BCBSNM, a division of Health Care Services Corporation (HCSC), a multi-state mutual insurance company. HCSC is a mutual company, owned by its policyholders. It calls itself a non-profit and insists that profits are invested back in the company to benefit policyholders. These increases, and other HCSC increases in the states in which operates, raise serious questions about that claim. HCSC claims that it needs these increases, but it is one of the financially strongest insurers in the nation. As of December 2009, HCSC has more than \$6.7 billion in surplus – more than five times the level required under state law to avoid increased regulatory scrutiny. HCSC made profits of \$515 million in 2009 and \$743 million in 2008 (down from recent highs of almost \$1.2 billion in 2005 and 2006). And the company paid its CEO 10.6 million in salary and bonuses in 2008.

To allow BCBSNM to effectuate these steep rate increases, impacting almost 40,000 New Mexicans, would be unconscionable.

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BCBSNM Is Causing Higher Rate Increases By Closing Blocks

The rate filing that BCBSNM submitted to the Division of Insurance to “justify” these rate hikes reveals that the insurer is egregiously cherry-picking the individual market. BCBSNM reported that:

With the exception of the BlueEdge plans and Blue Transitions all of the plans in this rate filing will be closed to new sales beginning 1/1/2010. However, we will continue to allow current members in these plans to transition to a different plan through an application process.¹

In other words, BCBSNM has isolated more than 37,000 New Mexicans – almost all of its individual market customers – into segregated closed plans, commonly referred to in the insurance industry as closed blocks. BCBSNM will no longer refresh the risk pools of these plans with new members to moderate the total costs of each pool as current members age or become sick. Only those members who can pass underwriting again will be permitted to move to a new plan. BCBSNM began marketing a series of new individual plans on January 1, 2010, under the BlueDirect line.

Insurers close blocks to retain healthier members and gradually force less healthy members out of their plans. By state law, insurers cannot cancel the policies of their members who get sick; they must renew policies so long as members stay on their current plan. However, insurers may require those who wish to switch to a new plan to pass underwriting again. When insurers close blocks, they skim healthier members who can pass underwriting out of the existing pool and into cheaper plans. But, sicker plan members are stuck in the pool with no new healthy members paying in to moderate costs and hold down rate increases. As these members age or get sick, the pool’s costs increase rapidly and insurers raise rates sharply to cover the costs. Eventually, many members of the block will be unable to afford coverage and will drop it.

New Mexicans who do not pass underwriting for a new plan and must remain in these closed blocks will continue to face dramatic rate hikes, “justified” by the higher costs associated with an aging group with health conditions and shrinking membership. Many will eventually be pushed out of these plans by unaffordable increases and will be unable to obtain new insurance due to medical conditions. It appears that the New Mexico Major Medical and the Number One plans, both closed blocks, have been in this “death spiral” for some time. Membership in these pools has shrunk rapidly since 1998 to less than 230 and 57 members, respectively, in July 2009. And plan members faced yearly average increases of more than 20% since 2007.

¹ Blue Cross Blue Shield of New Mexico, Actuarial Memorandum, November 5, 2009, pg. 1. In a revised Actuarial Memorandum, the company clarified that all existing individual plans would be closed as of December 31, 2009, with the exception of two high-deductible health savings account plans, a temporary transition plan, and a conversion plan. Total membership in these open plans was 2,345 people as of July 2009. See Actuarial Memorandum, revised, November 18, 2009, at pg. 1.

BCBSNM claims that it closes blocks because, as plan costs increase over time, premiums become too high to attract new members to the plan and the product stops selling.² However, this assertion is not credible because evidence shows the company closed its existing BlueDirect plans while they were still being sold at prices lower than the newly-launched BlueDirect plans. In pre-filed testimony, BCBSNM's actuary stated that its new BlueDirect plans are priced "significantly higher" than the BlueDirect closed block plans, but the new plans are nonetheless "competitive" and selling well.³

BCBSNM has the ability to aggregate policies and create broader risk pools. Instead, it is slicing and dicing its individual market to bring in lower cost customers and shed those with medical conditions.

The new federal health reform law is designed to put an end to this type of risk segregation by 2014. But New Mexico consumers need protection now so that large numbers of residents are not faced with unaffordable premiums and lack of coverage during the next four years. Indeed, BCBSNM may start the cycle again in this interim; it may close its newly-launched line of plans to new business and open new plans. BCBSNM closed the Blue Direct A, B, and C plans just slightly more than three years after they were introduced.

BCBSNM Has Not Justified the Rate Increases

BCBSNM's justifications for the rate increases were largely unsubstantiated in its November 5, 2009 rate filing and November 18, 2009 revised filing. The rate filings, which provided the basis for the Division's approval of these increases, apparently were not supported by underlying data to show how the company developed its trend and other projected claims factors and its projected expenses.

In particular, BCBSNM has not adequately explained or supported its "deterioration adjustment" in its calculation of projected claims. BCBSNM has only publicly disclosed that it used this adjustment to account for higher pool costs associated with its decision to close blocks.⁴

² BCBSNM actuary Kevin Carr stated: "Eventually when a pool or product has been marketed for several years, it will be closed to new sales. This happens because the rates become relatively uncompetitive, and as a result individuals stop buying the product." See Testimony of Kevin Carr, Exhibit B, April 2, 2010, page 9.

³ BCBSNM closed the BlueDirect A, B, and C plans on December 31, 2009, after marketing them for just more than three years. The company then introduced a new line of BlueDirect plans in January 2010. Carr testified that "the overall rate level for these new products was significantly higher than the existing rates for our current BlueDirect [A,B,C] products... We perform competitive studies and the rates for these new products are competitive for most plans, especially outside of Albuquerque. This is evident by the fact that individuals are buying these new products." Testimony of Kevin Carr, Exhibit B, April 2, 2010, page 14.

⁴ See Carr Testimony at 25. ("Deterioration happens primarily with closed pools. As no new members are entering the pool and rates are increasing, healthier members tend to opt out of coverage. This leaves the less healthy individuals in the pool and claims tend to increase at a faster rate. This effect was studied using all of the products' experience in this filing and one overall adjustment was made to each plan.")

The "deterioration adjustment" increased projected claims for each pool. Thus, BCBSNM has shown how its practice of closing blocks led directly to a projected need for higher rate increases. It should be noted that BCBSNM also made a deterioration adjustment to its open BlueEdge plans. And, in this instance at least, it appears

In addition, it is unclear whether BCBSNM is moving some members of closed blocks to more expensive health-status tiers based on increases in their prior year's medical claims. This practice would be akin to reunderwriting at renewal and would defeat the purpose of New Mexico's guaranteed renewal laws.

Finally, neither BCBSNM, nor the Division, have publicly disclosed critical pieces of information that will help consumers understand if and why the increases are necessary. For example:

- The Division's actuary initially concluded that "the experience presented justifies a rate increase of 18.014%."⁵ The Division has not sufficiently explained why this initial calculation differed from BCBSNM's average requested increase, and why the initial conclusion was discarded in favor of the requested 24.6% average increase.
- Consumers need information showing BCBSNM's past medical claim projections compared to actual claims for prior rating periods so that they can evaluate whether BCBSNM has a history of credible projections.
- Consumers need a breakdown of the administrative expenses and profit margins (reserve contributions) for all past experience periods for each plan and how prior requested expenses and profit margins compared to actual expenses and profit margins. Only gross margins (total administrative and reserve contributions) for prior experience periods are reported.
- BCBSNM claims to have suffered \$20 million in losses in the past three years on its individual under-age-65 line of business in New Mexico.⁶ No data is provided to substantiate this figure. CU was unable to identify these losses, specific to each individual market product, in the filings made public in these proceedings.

The New Mexico Division of Insurance appears to be simply evaluating whether BCBSNM is meeting minimum loss ratio "guidelines" without keeping an eye out for practices that are detrimental to consumers. The filings in this case, as well as HCSC rate increases in other states, raise questions regarding the company's practices in the individual market. They suggest an urgent need for reform for this company. Some questions that need to be answered include:

- How, specifically, has HCSC used its profits to benefit policyholders? What rights and representation do policyholders have in the company's management?

that BCBSNM aggregated and evenly spread the purported increased costs associated with closing blocks across all plans, although the effect on each separate pool would seem to vary based on the length of time the pool has been closed.

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⁶ page 32

- Why does HCSC continue to seek higher-than-average contributions to surplus (5% in this case) from its most vulnerable members, when its surplus now ranks among the highest of health insurer? Has HCSC management engaged in a realistic assessment of its surplus needs?
- Is HCSC's executive compensation consistent and fair for a non-profit mutual?
- Is HCSC's broker compensation scheme rewarding brokers for bringing in younger, healthier business and discouraging enrollment of individuals with some medical needs?
- Is HCSC working hard enough to contain costs and reform provider payment methods? Are cost containment efforts reflected in its provider reimbursement contracts?

New Mexico's regulators are leaving individual market consumers unprotected from predatory health insurers. Even as New Mexico implements healthcare reform, state officials must act to strengthen premium rate regulation.

The Commission and the Division also must be more transparent. Going forward, all individual market rate filings should be fully disclosed and posted prominently on the Division's website. They were not in this case. For more than one month, CU received no response to repeated requests for rate filings. These requests were submitted to the Commission's public information officer.

Finally, the hardship that New Mexicans face, including their potential loss of health insurance coverage, must be considered when determining whether to allow these rate increases.

Thank you for the opportunity to comment.

Sincerely,

Sondra Roberto
Staff Attorney
Consumers Union