

I am submitting comments in response to 45 CFR Parts 146 and 148, regarding Section 2794 of the Public Health Service Act (Section 1003 of the Patient Protection and Affordable Care Act (PPACA), Pub. L. 111-148). The questions set forth in the CFR are in bold text, and my comments are in plain text. These comments are restricted to:

Subsection A: Information Regarding Regulatory Guidance

- Topic 1: Rate Filings and Review of Rate Increases, questions (a)(1) and (2);
- Topic 2: Defining Unreasonable Premium Rate Increases, question (a);
- Topic 3: Public Disclosure, questions (a)(1) and (2);
- Topic 4: Exclusion from Exchange, questions (a) and (b);
- Topic 5: Grant Allocation, questions (a) and (b); and

Subsection B: Information Regarding Economic Analysis, Paperwork Reduction Act, and Regulatory Flexibility Act

- Topic 1: What policies, procedures, or practices of health insurance issuers and States may be affected by Section 2794 of the PHS Act? (questions a, b and c)

Recent rate increases in the individual plans offered by BlueCross-BlueShield of New Mexico have raised a great deal of controversy in New Mexico. As vice-chair of the interim Legislative Health and Human Services committee and as chair of the standing Senate Public Affairs Committee, I am often called upon to comment upon health insurance matters in our state. In preparation for the BlueCross-BlueShield rate increase matter, I have become acquainted with many aspects of New Mexico rate review process. I have discussed this at length with constituents, consumer advocates, our state's Attorney General and with our Division of Insurance. While not an expert in our state's rate review process, I have become quite concerned about the lack of consumer protection and involvement in our state's process. I agree with those who call for federal assistance to states in protecting consumer rights during rate review, when many states such as New Mexico simply do not have the resources to stand up to the better-equipped insurance companies.

1. Rate Filings and Review of Rate Increases

The Act requires the Secretary, in conjunction with States, to establish a process for the annual review of unreasonable increases in health insurance premiums. A justification for an unreasonable premium increase is also required.

a. To what extent do States currently have processes in place to review premium rates and rate increases?

1. What kinds of methodologies are used by States to determine whether or not to approve or modify a rate or a rate increase? What are the pros and cons of these differing methodologies?

In New Mexico, pursuant to NMSA 1978, § 59A-18-14., the superintendent of insurance must approve rates unless :

- the rate increase request form is not compliant with New Mexico's Insurance Code;
- it "contains, or incorporates by reference where such incorporation is otherwise permissible, any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general

- coverage of the contract, or which encourages misrepresentation of the policy or its benefits; is in any respect in violation of or does not comply with the Insurance Code;
- if the benefits offered are unreasonably restricted in relation to the premium charged; (there is clarification of this in the regulations or elsewhere as to what this means);
- if the rate increase request form "has any title, heading or other indication of its provisions which is misleading, or if the form is printed in such type or manner of reproduction as to be difficult to read; or
- if purchase of the form is being solicited by advertising, communication or dissemination of information which is deceptive or misleading.

The Division of Insurance's rules state that insurer expense trending "shall reflect actual expenses adjusted for anticipated increases or decreases on a company-by-company or other basis which accurately reflects differences in insurers' modes of operation and expense levels." NM Administrative Code, Section 13.8.2.18(B). "Actual expenses" are not defined.

New Mexico's methodologies do not take into account any balancing of the public's interest versus the insurer; it does not require disclosure of executive compensation or broker incentives to avoid higher-risk customers. They do not allow consideration of excessive profits, reserves or the rate increase's proportion to the health care cost index. It also does not allow consideration of the insurer's practice of isolating plan enrollees into segregated closed plans or "blocks" that exclude newer, potentially healthier populations and retain the individuals who face increasing premiums as members of that block age or develop illnesses.

There is no consideration of rate increase requests' relationship to the practice of closing pools' effect upon driving costs higher within those pools.

New Mexico does not have the resources for expert, independent actuarial analysis.

New Mexico's rate increase review methodologies thus favor insurers through selective attention to factors affecting rate increases, at the expense of ratepayers.

2. Defining Unreasonable Premium Rate Increases

The Act provides that the initial and continuing rate review process under Section 2794 is only to be undertaken for 10 unreasonable premium rate increases.

a. In States that currently have rate review processes, are all rates or rate increases generally reviewed? If so, for what markets and/or products? If not, what criteria do these States typically use when determining which rates or rate increases will be reviewed? To what extent do States require that these reviews take place before the proposed rate increases can be implemented?

New Mexico ostensibly provides for rate increase reviews, but as explained *supra*, the methodologies employed favor insurers. Within the past two decades, only one rate increase request has been accorded a public hearing and that case was settled prior to the hearing. The public was told at the scheduled hearing of the terms to which the parties had agreed without public input.

New Mexico law is not clear on the hearings process, however. The regulation providing for a right to a hearing states that the superintendent may deny the request and it cites Section

59A-17-34A NMSA 1978, which does not pertain to health insurance.

3. Public Disclosure

The Act requires that health insurance issuers prominently post the justification for an unreasonable premium increase on their Internet websites prior to implementation of the increase.

a. To what extent is information on premium rates and premium rate increases, and related justifications, currently made available to the public?

1. To what extent are annual summaries of premium rate increases currently made available to the public on State or consumer websites, and/or made available by request? Where available, to what extent is this information generally provided by policy form, type of product, line of business, or some other grouping?

In New Mexico there are no annual summaries of premium rate increases made available to the public.

2. To what extent are rate filings with actuarial justification and supporting documentation generally made available to the public? In what format(s) are rate filings currently made available to the public? What format(s) would be most useful to the public?

This material is available only upon request in New Mexico, and only after repeated requests to the public information officer of the New Mexico Public Regulation Commission.

3. What kinds of supporting documentation are necessary for consumers to interpret these kinds of information?

Information about individual pools, company profits, executive compensation, broker incentives, medical losses and administrative costs should be available in plain-language documents and prominently posted on the Insurance Division's web site.

b. What kinds of information relating to justification for an unreasonable premium increase could potentially be made available?

Information about individual pools, company profits, executive compensation, broker incentives, medical losses and administrative costs should be available in plain-language documents and prominently posted on the Insurance Division's web site.

4. Exclusion from Exchange

For plan years beginning in 2014, States receiving grants in support of the rate review process must make recommendations, as appropriate, to the State Exchange about whether particular insurance issuers should be excluded from participation in the Exchange based on a pattern or practice of excessive or unjustified premium increases.

a. To what extent have States developed definitions of what constitutes an excessive or unjustified premium rate increase and/or a pattern or practice of such increases? How could a pattern or practice of excessive unjustified premium increases be defined in this context, and what are some of the pros and cons of the various approaches that are

available?

In the individual market, New Mexico has no definition of "excessive or unjustified premium rate increase" other than our statutory provision that holds that "if the benefits offered are unreasonably restricted in relation to the premium charged." Section 59a-18-14(A)(3)NMSA 1978 . The law and relevant regulations offer no illustration as to what this criterion means. Otherwise, the consideration are merely upon whether the insurer would remain solvent without the rate increase.

b. What criteria could be established to determine whether insurers have engaged in a pattern or practice of excessive or unjustified premium increases?

Excessive or unjustified premium increases could be found where insurers increased premiums while:

- health-care cost indices are much lower than the rate of premium increases, according to a range defined by statute or regulation;
- the insurer provides excessive executive compensation, as defined by statute or regulation;
- the insurer closes risk pools so that members are trapped in adverse-selection "death spirals"; and
- holds an unreasonable amount of premiums in reserve, as defined by statute or regulation.

5. Grant Allocation

The Act directs the Secretary to allocate \$250 million in grant money to States to carry out the rate review process.

a. What factors could be considered in grant allocation?

- premium rates in that state in relation to other states;
- the proportion of uninsured to insured individuals in that state; and
- the existing capacity of that state, in terms of actuarial and investigative expertise on staff, to perform adequate rate reviews at present.
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b. What weighting could be given to different factors and why?

The proportion of uninsured to insured individuals in that state should be given the greatest weight, because excessive rates lead to greater incidence of uninsured people in a state and clearly demonstrates a need for attention to rate-review processes as a solution to providing affordable insurance products there.

Premium rates in that state in relation to other states should be given the second-greatest weight, because this factor is likely to be directly related to that state's need for adequate rate review processes.

The existing capacity of the state to perform rate reviews should be considered last, as this factor may relate as much to political priorities within that state as to economic need.

B. Information Regarding Economic Analysis, Paperwork Reduction

The Department is requesting comments that may contribute to the analyses that

will be performed under these requirements, both generally and with respect to the following specific areas:

1. What policies, procedures, or practices of health insurance issuers and States may be affected by Section 2794 of the PHS Act?

a. What direct or indirect costs and benefits would result?

New Mexico's Division of Insurance is currently unable to afford adequate, independent analysis of rate increase requests. Section 2794 would provide crucial assistance to New Mexico.

b. Which stakeholders will be impacted by such benefits and costs?

The current and potential purchases of health insurance would greatly benefit from the independent review of insurance premium increases Section 2794 would afford. New Mexico has one of the highest rates of uninsured in the country, and this is largely due to the cost of insurance here.

c. Are these impacts likely to vary by insurance market, plan type, or geographic area? Yes; rural New Mexicans are likely to benefit most from rate reviews, because they have almost no choice for insurance products and are thus much more at the mercy of insurers when they request rate increases.