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REGULATORY BULLETIN 2013-4¹

To: Life and Disability Insurers, Health Care Services Organizations, Hospital, Medical, Dental and Optometric Service Corporations, Life and Health Insurance Administrators, Producers, Professional Associations and Interested Parties

From: Germaine Marks 
Director of Insurance

Date: December 20, 2013

Re: **Threshold Rate Increase Review in the Small Group Market**

Introduction

The purpose of this Regulatory Bulletin is to notify regulated entities and other stakeholders that effective January 1, 2014, the Arizona Department of Insurance (the Department) will exercise its authority to review certain health insurance rate increases in the small group health insurance market. This authority derives from ARS §§ 20-238(A-B) and 45 CFR § 154.215(c).

Background

The federal Affordable Care Act (the "ACA") requires a health insurer² seeking a rate increase at or over a certain threshold (a threshold rate increase) to publicly disclose and justify the proposed increase. This requirement applies only to major medical coverage in the individual and small group markets and does not apply to grandfathered plans. The ACA also requires state or federal reviewers to determine whether a threshold rate increase is reasonable or unreasonable.³

¹ This Substantive Policy Statement is advisory only. A Substantive Policy Statement does not include internal procedural documents that only affect the internal procedures of the Agency, and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this Substantive Policy Statement does impose additional requirements or penalties on regulated parties, you may petition the agency under ARS § 41-1033 for a review of the Statement.

² In this Regulatory Bulletin, the term "health insurer" means an entity with an Arizona certificate of authority as a disability insurer (ARS §§ 20-216 and 20-253), a hospital, medical or optometric service corporation (ARS § 20-825) or a health care services organization (ARS § 20-1054).

³ Sec 1003 of the ACA established these requirements by adding a new Sec. 2794(a)(2) to the Public Health Services Act, codified at 42 USC § 300gg-94(a).

On June 24, 2011, the federal Center for Consumer Information and Insurance Oversight (CCIIO)⁴ notified the Department that Arizona did not meet CCIIO's requirements for conducting effective rate review of threshold rate increases (threshold rate review or TRR). Between September 1, 2011 and December 31, 2012, CCIIO reviewed threshold rate increases that affected Arizona consumers in order to determine whether the increases were reasonable or unreasonable.

On October 3, 2012, the Department promulgated Arizona Administrative Code (AAC) R20-6-2301 through R20-6-2305 (the TRR Rule). The TRR Rule established the Department's authority to require individual health insurers to provide data and documentation under the federal rate review rule. 45 CFR Part 154. On December 19, 2013 CCIIO notified the Department that Arizona met CCIIO's requirements for conducting threshold rate review increases in the individual health insurance market. Since January 1, 2013, the Department has conducted the review of threshold rate increases in Arizona's individual health insurance market, including threshold rate increases affecting individual members of an association or trust. AAC R20-6-2301(7)(b). Throughout 2013, CCIIO has continued to review threshold rate increases in the small group market.

Changes in State and Federal Law: Impact on TRR in the Small Group Market.

As a result of developments in state and federal law, the Department is not required to promulgate an administrative rule to obtain the documentation necessary to conduct threshold rate review in the small group market.

Effective March 29, 2013, 45 CFR § 154.215(a) requires health insurers to submit a Rate Filing Justification for all affected products in the individual or small group market. Under 45 CFR § 154.215(b), a Rate Filing Justification has three parts:

- Part I, the CMS uniform rate review template ("URRT").
- Part II, a written description justifying the rate increase (required only for a threshold rate increase).
- Part III, rate filing documentation in the form of an actuarial memorandum.

45 CFR § 154.215(c) requires insurers to submit the Rate Filing Justifications to CMS and to the applicable state, if the applicable state accepts the submissions.

Effective September 13, 2013, ARS § 20-238(A) directs the Insurance Director to ensure that this state retains its full authority to regulate health insurance policies taking into consideration the Affordable Care Act. ARS § 20-238(B) requires insurers to comply with the Affordable Care Act or any rules adopted pursuant to the Affordable Care Act.

Consistent with ARS §§ 20-238(A) and (B), the Department accepts any Rate Filing Justification that an insurer submits to CMS.

Definition of "Threshold Rate Increase" in the Small Group Market.

Currently in Arizona a threshold rate increase is one in which the average increase for all

⁴ CCIIO is part of the Center for Medicaid and Medicare Services (CMS).

enrollees weighted by premium volume is ten percent or more. 45 CFR §§ 154.200(a) and (c). The threshold of ten percent is subject to change pursuant to 45 CFR §§ 154.200(b). A rate increase that does not by itself meet or exceed the threshold will be considered a threshold rate increase if it meets or exceeds the threshold when combined with a previous increase or increases during the 12 month period preceding the date on which the rate increase would become effective. 45 CFR 154.200(d).

Implementation of a Threshold Rate Increase in the Small Group Market

A health insurer must submit every small group threshold rate increase to CMS and to ADOI before it implements the increase. 45 CFR § 154.220(b). A health insurer may not implement the increase until ADOI determines whether the threshold rate increase is reasonable or unreasonable. Because 45 CFR § 154.230 establishes the conditions for implementing a rate increase that ADOI finds unreasonable, a health insurer that implements an increase before ADOI makes its determination cannot know whether 45 CFR § 154.230 applies.

Filing Requirements, Timeline and Process

Arizona's threshold rate review requirements and process do not replace or in any way affect any other rate submission process that applies to small group rates in Arizona. Specifically, the submission requirements established in ARS § 20-2311(E) and (G) are still in effect.

Generally, the filing requirements, timeline and process for small group threshold rate increase filings are the same as those for individual group threshold rate increase filings. Health insurers must submit threshold rate review filings via the System for Electronic Rate and Form Filing (SERFF). The Department's filing requirements for threshold rate review filings are available on SERFF as section 5(c) of the Comments under the Requirements tab. The Department's checklist of filing requirements is available on SERFF under the Submission Requirements tab.

A health insurer submitting a threshold rate increase for review must submit the threshold rate increase filing a minimum of 60 days prior to the date the insurer intends to implement the increase in Arizona. ADOI will make every reasonable effort to complete each threshold rate review within 60 days of receiving the filing but strongly encourages filers to submit threshold rate increase filings at least ninety days before the planned implementation date. ADOI does not have process for an expedited review of a threshold rate increase filing.

When the Department receives a threshold rate increase filing, Department staff will review the filing for administrative completeness. If the filing is administratively complete, the Department will refer it to a contracted external actuary to conduct the substantive review regarding the reasonableness of the rate increase. The actuary will conclude his or her review with a recommended determination either that the threshold rate increase is reasonable or that it is unreasonable. The actuary will provide the Department with an explanation of the reasonableness analysis he or she conducted under 45 CFR Part 154. As with other filings it reviews, the Department will make every reasonable effort to notify health insurers if the Department or the reviewing actuary have questions about a threshold rate increase filing and to give the health insurer an opportunity to correct any deficiencies identified during the review.

Within five days of making a final reasonableness determination, the Department will provide the determination to CCIIO, in accordance with 45 CFR § 154.210(b)(2). The Department will notify the health insurer of its final determination at the same time the Department provides the

determination to CMS. The Department's notice of final determination will include a brief explanation of how its analysis of the factors set forth in AAC R20-6-2305(B) caused it to arrive at its determination. A diagram/timeline for the Department's threshold rate increase review is available on SERFF as an attachment to "Comments" under the Requirements tab.

An ADOJ determination that a threshold rate increase is unreasonable does not prevent the insurer from implementing the increase but it triggers additional disclosure requirements in connection with the implementation. 45 CFR § 154.230. A diagram/timeline showing the options available to an insurer if the Department determines that a threshold rate increase is unreasonable is available on SERFF as an attachment to "Comments" under the General Requirements tab.

Payment for External Actuarial Review of Threshold Rate Increase Filings

CCIIO notified the Department on September 21, 2012 that CCIIO would award Arizona a grant under a Funding Opportunity Announcement entitled, "Grants to States for Health Insurance Rate Review-Cycle II". During the Rate Review Grant period, (October 1, 2012 to September 30, 2014), the Department will use grant funds to pay the contracted external actuaries for their review services. The Department plans to require health insurers to bear the cost of the actuarial review when the grant period is over.

If you have any questions about this Regulatory Bulletin, please contact Sheri Shudde at sshudde@azinsurance.gov or 602-364-2143.