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**Date:** April 9, 2018  
**From:** Samara Lorenz, Director, Oversight Group  
**Title:** Insurance Standards Bulletin Series -- INFORMATION  
**Subject:** Bulletin: State-Specific Threshold Proposals Submission and Review Process

I. Purpose

This document informs States of the process under 45 C.F.R. § 154.200(a)(2) for submission and review of proposals for State-specific subject to review thresholds for single risk pool rate filings for plan or policy years beginning on or after January 1, 2019.

II. Background

Consistent with 45 C.F.R. § 154.200(a), a rate increase for single risk pool coverage is subject to a reasonableness review if: (1) the rate increase is 15% or more applicable to a 12-month period that begins January 1<sup>1</sup>, or (2) the rate increase meets or exceeds a State-specific threshold approved by the Secretary. The process described below applies to States interested in proposing a State-specific threshold higher than the Federal default threshold. It closely mirrors the approach outlined in the March 27, 2012 “State Specific Threshold Proposals, Guidance for States”<sup>2</sup> regarding proposals for State-specific thresholds to be effective from September 1, 2012, through August 31, 2013.

As noted in the 2019 Payment Notice Final Rule, the Federal review threshold is a minimum standard. States are able to apply a stricter standard, and many already do. Because States that apply a lower threshold meet the Federal minimum standard, we do not believe it is necessary or appropriate to require those States to submit a proposal to CMS. Therefore, CMS only requires submission of proposals from States requesting a higher threshold.<sup>3</sup> States that impose stricter standards will communicate those standards to their issuers as they currently do with many other aspects of State-specific requirements.

III. Submission and Review of State Proposals

45 C.F.R. § 154.200(a)(2) requires State-specific thresholds to be based on factors impacting rate increases in a State to the extent that the data relating to such State-specific factors is available. For

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<sup>1</sup> The Federal default threshold is 15 percent beginning with single risk pool rate filings submitted by issuers for plan or policy years beginning on or after January 1, 2019. See the HHS Notice of Benefit and Payment Parameters for 2019 Final Rule (2019 Payment Notice Final Rule) (April 9, 2018), available at <https://www.cms.gov/ccii/>.

<sup>2</sup> <https://www.cms.gov/CCIIO/Resources/Files/Downloads/rrjssptguidance.pdf>.

<sup>3</sup> See 45 C.F.R. § 154.200(a)(2).

example, a State proposal for a higher threshold could account for State-specific variations in rate increases based on the cost of health care, utilization patterns, or other factors affecting health insurance rates in a State.

States are encouraged to include in their proposals both qualitative and quantitative data and other information they believe support the establishment of a review threshold higher than the Federal default. CMS encourages States to include a broad range of data and information and to avoid reliance on a limited set of factors when preparing proposals.

Proposals may include State-specific factors that are predictive of variation in rate increases and may include both analytically-oriented items and policy-oriented items. Examples of both are listed below. No single item listed here would likely be sufficient to support a State-specific threshold proposal. Instead, a State will likely need to combine several factors along with the supporting data.

The following are examples of *analytically*-oriented factors that might have predictive validity for rate increases either in combination, or when paired with policy-oriented factors:

- History of average rate increases in individual and small group markets;
- Benefit design (such as deductible levels);
- Mix of open versus closed blocks;
- Mix of individual versus small group (overlaid with association versus non-association);
- Actual loss ratios consistently higher than the projected loss ratios filed; or
- Various State-specific factors that individual States may be able to prove have caused their average requested rate increases to be substantially higher than the current Federal default threshold, such as:
  - medical cost increases, or
  - provider network consolidation or expansion.

Analytically-oriented factors relevant to State-specific thresholds should meet two criteria:

- First, factors should be objectively measurable and the State should prove that they have predictive validity in determining attributes of the distribution of rate increases for a State.
- Second, factors should not be subject to gaming.

Once the State has validated that a particular factor or set of factors has predictive validity and is not subject to gaming, it could attempt to show that a significant majority of the items indicate the need for a higher threshold. Then, the State might propose to raise the threshold to create a State-specific threshold.

Below are examples of *policy*-oriented factors that a State may consider as support for its proposal to raise the threshold. These are the types of subjective factors that a State could present in a narrative report:

- The competitiveness of State markets;
- The scope and effectiveness of a State's rate review program;
- The effectiveness of a State's public comment process;
- A large volume of public comments about the need to increase the threshold;
- Evidence that the burden on industry due to a given threshold is more than previously had been assumed;
- Approvals above or below the present threshold that might demonstrate a need to increase the State's threshold; and
- Other policy considerations that may be unique to a particular State.

Finally, when all factors submitted as part of a State-specific threshold proposal are considered, the

proposed threshold should meet the following policy criteria:

- Effectively capture rate increases that may be found to be unreasonable upon review;
- Be low enough to provide for the disclosure of a meaningful amount of public information about rate increases; and
- Balance the first two needs with the potential issuer, State, and CMS burden associated with rate increases that are not likely to be found unreasonable.

CMS will review proposals submitted by the applicable deadline and provide the State with the CMS determination in writing. To complete its review, CMS may need additional information and will follow-up with the State, as needed. Should that become necessary, it will benefit the State to respond as quickly as possible to the request for information.

#### IV. Submission Deadline and CMS Posting of Information on State Proposals

Consistent with 45 C.F.R § 154.200(a)(2), States wishing to propose a State-specific threshold to be used for a twelve month period beginning January 1 of any year must submit their respective proposals to CMS no later than August 1 of the preceding year. As such, States wishing to propose a higher State-specific threshold for the 2019 plan year must submit their proposals by August 1, 2018. States are encouraged to submit proposals earlier than the deadline, if possible.

Proposals may be submitted by email to: [ratereview@cms.hhs.gov](mailto:ratereview@cms.hhs.gov) or by mail at:

Centers for Medicare & Medicaid Services  
Center for Consumer Information and Insurance Oversight  
7500 Security Blvd.  
Mail stop –WB-22-75  
Woodlawn, MD 21244  
ATTN: State-specific Threshold Review

CMS will post a list of all pending State-specific threshold proposals requesting a threshold higher than the Federal default, as well as CMS's determination on those proposals, at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/sst.html>

Questions about the process described here should be directed to [ratereview@cms.hhs.gov](mailto:ratereview@cms.hhs.gov).