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**Date:** September 26, 2016  
**From:** Samara Lorenz, Director, Oversight Group  
**Title:** Insurance Standards Bulletin Series -- INFORMATION  
**Subject:** CCIIO Sub-Regulatory Guidance: Issuer posting of rate filing information

## **I. Purpose**

The purpose of this Bulletin is to provide additional guidance on the reporting requirements that must be met by health insurance issuers that implement rate increases determined by the Centers for Medicare & Medicaid Services (CMS) or a State to be unreasonable. Specifically, this Bulletin explains the manner in which an issuer must “prominently post” the required rate filing information and its Final Justification for implementing a rate increase deemed to be “unreasonable” and clarifies the type of information that an issuer must include in its Final Justification. This Bulletin also clarifies that an issuer must prominently display the required rate filing information, including the Final Justification, for at least three years. This information applies to health insurance issuers offering non-grandfathered health insurance coverage in the individual or small group market through or outside of an Exchange (also known as a Marketplace).

## **II. Background**

If a health insurance issuer implements a rate increase that has been determined to be unreasonable by CMS, or by a State with an Effective Rate Review Program<sup>1</sup>, the health insurance issuer must, within the later of 10 business days after the implementation<sup>2</sup> of such increase or the health insurance issuer's receipt of the final determination by CMS or the State (as applicable):

- (1) Submit to CMS a Final Justification in response to CMS's or the State's final determination; and
- (2) Prominently post on its Web site the following information on a form and in the manner prescribed by the Secretary:

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<sup>1</sup> CMS will adopt a State's determination of whether a rate increase is an unreasonable rate increase, if the State (1) has an Effective Rate Review Program as described in §154.301; and (2) provides to CMS, on a form and in a manner prescribed by the Secretary, its final determination of whether a rate increase is unreasonable, which must include 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, within five business days following the State's final determination. See 45 CFR §154.210(b).

<sup>2</sup> For this purpose, unless otherwise specified by applicable State law, the term “implementation” means the first day on which the product is marketed or offered for sale with the rate increase.

- (i) The information made available to the public by CMS and described in §154.215(h)<sup>3</sup>;
- (ii) CMS's or the State's final determination and brief explanation described in §154.225(a) and §154.210(b)(2)<sup>4</sup>; and
- (iii) The health insurance issuer's Final Justification for implementing an increase that has been determined to be unreasonable by CMS or the State.

(3) The health insurance issuer must continue to make this information available to the public on its Web site for at least three years.<sup>5</sup>

### **Prominent Display**

45 CFR 154.230(c)(2) requires an issuer to *prominently post* the required information on its web site *on a form and in the manner prescribed by the Secretary*. For purposes of compliance with this requirement, CMS interprets “prominently post” to mean:

(i) the required information can be viewed on the issuer's public Web site through a clearly identifiable link or tab located on the home page, without requiring an individual to create or access an account or enter a policy number; and

(ii) an individual can easily discern which rate filing information applies to a specific product in a specific market and year.

### **Content of Final Justification**

The Final Justification is submitted in response to a determination of an unreasonable rate increase when an issuer implements the unreasonable rate increase. Although the information in the Final Justification must be consistent with the information submitted in the Rate Filing Justification supporting the rate increase, the Final Justification should not simply restate the rationale that was included in the rate filing. Rather, the Final Justification should include a thorough explanation and analysis of the issuer’s decision to implement a rate increase determined to be unreasonable. Such an explanation should include responses to concerns raised by CMS or the State (as applicable) in its final determination.

### **III. Where to get more information**

If you have any questions about this Bulletin, please contact CCIIO at [ratereview@cms.hhs.gov](mailto:ratereview@cms.hhs.gov) and reference the Bulletin in the subject line of your email message.

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<sup>3</sup> The information made public by CMS includes: the information contained in Part II of each Rate Filing Justification; the information contained in Parts I and III of each Rate Filing Justification that is not a trade secret or confidential commercial or financial information as defined in HHS's Freedom of Information Act regulations, 45 CFR 5.65; and a disclaimer that explains the purpose and role of the Rate Filing Justification.

<sup>4</sup> The final determination of whether a rate increase is unreasonable will include a brief explanation of how CMS or the State’s analysis of the relevant factors set forth in §154.301(a)(3) caused it to arrive at that determination.

<sup>5</sup> 45 CFR 154.230(c).