



American Cancer Society ☞ Children's Defense Fund/New York ☞ Community Service Society of New York
Empire Justice Center ☞ Institute for Puerto Rican and Hispanic Elderly
Make The Road New York ☞ Medicare Rights Center
Metro New York Health Care for All Campaign ☞ New Yorkers for Accessible Health Coverage ☞
New York Immigration Coalition ☞ Public Policy and Education Fund of New York/Citizen Action of New York
Raising Women's Voices ☞ Schuyler Center for Analysis and Advocacy

July 12, 2013

Benjamin M. Lawsky
Superintendent of Financial Services
One State Street
New York, NY 10004

Mr. Charles Lovejoy
Health Bureau New York State Insurance Department
25 Beaver Street
New York, NY 10004

Re: Proposed Off-Exchange Rates for 2014

Dear Superintendent Lawsky and Mr. Lovejoy:

Health Care for All New York ("HCFANY") respectfully submits these comments on the proposed Off-Exchange rates for Q1-Q4 2014 in the individual and small group products currently pending before the New York State Department of Financial Services (the "Department").

HCFANY is a coalition of more than 150 consumer and small business advocacy organizations dedicated to achieving affordable, comprehensive, and high-quality health care for all New York residents. In general, HCFANY is pleased to see significant premium declines from many of the New York carrier rates, especially when compared with the products currently available in the individual market. It is evident that the implementation of the Affordable Care Act has contributed to significant declines in premium costs. The silver level premiums proposed in the filings with the Department show an average premium rate of \$506.97.¹ The decline in price will allow many New Yorkers without coverage to become covered for the first time and will allow

¹ This number is a result of a review done by HCFANY of proposed premiums for silver-level plans in this year's filings except for the two plans discussed below.



others who currently purchase their own insurance but are unhappy with their current coverage to make better and more affordable choices for themselves and their families.

A comparison of Excellus' individual products from 2013 to their proposed products illustrates the premium decline. Excellus currently offers an HMO product in the individual market that has an actuarial value of 92%² and a monthly premium price in Monroe County of \$1,123.³ Excellus is proposing a premium for the individual platinum level plan (with a 90% actuarial value) in 2014 for the Rochester Region for only \$595.⁴ This represents a savings to the consumer of 47% for comparable benefits. Similar reductions in premium costs are evident across all regions in Excellus' filings.

While most carriers propose improved premium rates, HCFANY respectfully requests that the Department carefully review the outliers in this year's filings, which are identified below.

Individual Market Outliers

HIP Insurance Company of New York – State Tracking Number 2013050243

HCFANY urges the Department to closely review HIP's filings. HIP's proposed EmblemHealth Prime Silver product is a plan with benefits similar to those of silver-level plans offered by the other carriers, but two factors set it apart as an outlier: (1) Its premium rates are much higher than its competitors'; and (2) HIP's projected medical cost trend far exceeds its competitors.

First, HIP's proposed premiums are significantly higher than others in the market, and proposed rates for the New York City, Mid-Hudson and Long Island regions are particularly high (\$784, \$784 and \$804, respectively).⁵ To put this into context (excluding the two plans discussed below) the average silver-level offerings proposed by the providers in these regions were \$507, \$511 and \$508, respectively. This means that HIP's proposed rates are 154 percent, 153 percent, and 158 percent of their competitors' average prices. In addition, the proposed rates are for a silver-level plan with an actuarial value of 70%. This seems inconsistent with the Excellus offer of a *platinum*

² Community Service Society, "Three Steps to Affordable Health Coverage for New York's Employers", page 5, available at <http://nyshealthfoundation.org/uploads/resources/expanding-affordable-coverage-low-waged-workers-june-2010.pdf>

³ Premium Rates for Standard Individual Health Plans June 2013, available at http://www.dfs.ny.gov/insurance/hmorates/pdf/hmo_rates_full.pdf

⁴Excellus 2014 Rate Manual, page 5. Available at <https://myportal.dfs.ny.gov/documents/538523/1074030/Excellus+Health+Plan+IND+EPO+PPO+EXHP-128987637.pdf>

⁵ HIP Insurance Company of New York 2014 Rate Manual, page 1-3. Available at <https://myportal.dfs.ny.gov/documents/538523/1074030/HIP+Insurance+Co.+of+NY+IND+EPO+HHP-129041103.pdf>



plan (with an actuarial value of 90%) in the Mid-Hudson region for \$725.⁶ In short, a consumer could save \$59 and upgrade their plan from a silver plan to a platinum plan. Accordingly, we request that the Department closely review the HIP filings to ensure the consumer is exchanging value for value.

Second, HIP's Actuarial Memorandum cites a medical cost trend increase of between 11.9 and 19.9 percent. These numbers are between two and four times the 2014 estimate released by PriceWaterhouseCooper's (PwC) Health Research Institute in their annual Medical Cost Trend report.⁷ This report, one of the more respected reports released nationwide, suggests that the cost trend should not exceed 6.5%.

Based on the two concerns described above, HCFANY encourages the Department to apply close scrutiny to HIP's filings.

Oxford Health Plans – State Tracking Number 2013050130

HCFANY also urges the Department to review the filings from Oxford Health Plans for three reasons: (1) It is proposing premiums that provide no regional variations in medical cost and reimbursement rates; (2) Its proposed premiums are higher than its competitors; and (3) Its projected medical trends also substantially exceeds those of its competitors.

First, Oxford Health Plan is seeking to offer a product called Oxford Gated Liberty NY Standard Silver in the Mid-Hudson, New York City and Long Island regions for an identical premium rate of \$779.⁸ This premium does not fluctuate across regions. According to our understanding, provider reimbursement rates typically vary regionally, resulting in commiserate regional variation. Failure to consider the variation of medical costs and the different reimbursement rates must have a negative impact on some consumers. As a result, we urge the Department to closely scrutinize the filings to ensure that this uniformity is justified.

Second, Oxford's premium rates appear much higher than its competitors. Conducting the same analysis as with HIP, *supra*, shows that a Mid-Hudson region consumer could save \$54 by choosing Excellus's platinum plan over Oxford's silver plan. As a result, a consumer could enroll in a plan with 20% higher actuarial value and *save* money. HCFANY urges the Department to review Oxford's rates and ensure that they are correctly developed.

⁶ *Supra*

⁷ Medical Cost Trend: Behind the Numbers 2014, available at http://www.pwc.com/en_US/us/health-industries/behind-the-numbers/assets/medical-cost-trend-behind-the-numbers-2014.pdf

⁸ Oxford Health Plans 2014 Rate Manual, page 1. Available at <https://myportal.dfs.ny.gov/documents/538523/1074030/Oxford+Health+Plans+%28NY%29%2C%20Inc.+IND+HMO+POS+XFRD-129012964.pdf>



Finally, it is also informative to consider Oxford's projected medical cost trend. Oxford projects a cost trend of 10.5% or 4% higher than that indicated in PwC's report. These variations in cost trend may be the underlying cause for some outlier's elevated premiums and we would ask the Department to review the filings.

Small Group Market

While HCFANY is pleased by the decrease of the cost of premiums in the individual market, there is stability or a slight increase of the cost of the premiums in the small group market. Should the Department accept the proposed small group rates, it would result in an outcome that is contrary to leading market analyzers, which predict reductions in small group prices. We ask that the Department consider in particular the Oxford EPO product, for which proposed rates appear higher than those of the benchmark plan. We also ask that the Department scrutinize the small group applications with regard to projected medical trends, which seem high.

The Urban Institute, in its report "The Coverage and Cost Effects of Implementation of the Affordable Care Act in New York State", predicts a decrease of the cost of premiums in the small group market of approximately 5%.⁹ In a study commissioned by the Department,¹⁰ Deloitte predicts a reduction in the price of premiums in the small group market in the amount of 4.3%. However, these projections are not evident in the proposed small group rates. HCFANY asks the Department to ascertain if the carriers are overestimating factors that drive their rates up, and not accounting for those market changes that promise to reduce costs.

It is interesting to consider the case of the Oxford small group EPO product, since Oxford Health Insurance, Inc.'s current EPO plan is the New York State benchmark plan.¹¹ Because it is the Department's adopted benchmark plan for covered benefits, the Oxford EPO product should permit reference to its pricing. Oxford's 2013 products range in price from \$367 to \$642¹² in the New York City region. Oxford's proposed plans for 2014 range from \$608 to \$651 for silver level

⁹ The Urban Institute, "The Coverage and Cost Effects of Implementation of the Affordable Care Act in New York State", page 9, available at <http://www.urban.org/UploadedPDF/412534-Affordable-Care-Act-in-New-York-State.pdf>

¹⁰ Deloitte, "Impact of the Affordable Care Act on the New York Small Group and Non-Group Markets", page 4, available at <http://www.healthbenefitexchange.ny.gov/sites/default/files/Deloitte%20Uninsured%20Study.pdf>

¹¹ Centers for Medicare & Medicaid Services, "Essential Health Benefits: List of the Largest Three Small Group Products by State", June 3, 2012, page 12, available at <http://www.cms.gov/CCIIO/Resources/Files/Downloads/largest-smgroup-products-7-2-2012.pdf>

¹² Oxford Health Insurance, Inc., 2013 Rate Manual. Available at <https://myportal.dfs.ny.gov/web/prior-approval/oxfordhealthins/sg-epo-xfrd-128360458>



plans.¹³ Notably, there are no proposed offerings that are priced in line with the lower end of Oxford's current products. Even accounting for certain factors that increase the price, doubling of the pricing seems to warrant further investigation. Even though it is the benchmark plan, it still requires some benefit additions in order to comply with the Affordable Care Act. Oxford's own actuarial memo attributes a 3.2% increase to these additional benefits. Oxford also projects a 10.5% medical trend. This trend seems high, but even granting this trend, the proposed prices warrant attention. If the current product priced at \$367 were increased according to the essential health benefit adjustment and Oxford's assumed medical trend, its price would be \$417, still well below the least expensive proposed price of \$608. While these rate increases could be justified, we would ask the Department to carefully scrutinize these filings.

Second, most of the small group plans use a projected medical cost trend that exceeds the PwC projected trend of 6.5%.¹⁴ In some cases, particularly in the case of HIP Insurance Company of New York and Group Health Incorporated, these projections are three to four times higher than PwC's projected trend.¹⁵ We would respectfully ask for the Department to carefully scrutinize the seemingly inflated medical cost trends of those plans that substantially exceed PwC's estimates, and whether there is a good faith basis for the insurers to have used a higher rate.

Finally, HCFANY urges the Department to review the following small group plans that warrant closer review.

Aetna Health Inc. – State Tracking Number 2013050115

We encourage the Department to consider Aetna's historical need to issue rebates when evaluating its proposed rates. Since the passage of the Affordable Care Act, Aetna has struggled to comply with the law and keep the Medical Loss Ratio above 82% in the state of New York. In 2011, Aetna returned \$3,663,077 to its subscribers and in 2012 it issued a rebate in the amount of \$3,454,360.¹⁶ Based on the filings for 2014, Aetna claims it will have a MLR of 83.4%.¹⁷ However, this trend of repeated violations of the MLR mandate should be kept in mind as the Department reviews their proposed premiums.

¹³ Oxford Health Insurance, Inc., 2014 Rate Manual, page 11 and 16. Available at <https://myportal.dfs.ny.gov/documents/538523/1074030/Oxford+Health+Insurance+Inc.+SG+EPO+PPO+XFRD-129012941.pdf>

¹⁴ Supra.

¹⁵ HIP Insurance Company of New York and Group Health Incorporated each have a 18.57% and 22.1%, respectively.

¹⁶ Centers for Medicare & Medicaid Services, "Medical Loss Ratio Data and System Resources", available at <http://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.html>

¹⁷ Aetna Health Inc., "Actuarial Memorandum and Certification In Support of Unified Rate Review Template", page 1 and 4. Available at

<https://myportal.dfs.ny.gov/documents/538523/1230191/Aetna+Health+Inc.+SG+HMO+AETN-128992632.pdf>



Empire Health Choice—Contraceptive Rider

We were troubled by the inclusion in the Empire Health Choice small group application of the “Opt-out of Contraceptives Rider” and “Member Opt-in of Contraceptives Coverage.” This is contrary to the requirements of the federal health care law. All non-grandfathered plans are required to provide coverage for contraception and sterilization and related education and counseling. We understand that some religiously affiliated non-profit organizations may object to this coverage. The final federal rule accommodates eligible organizations by allowing them to shift the responsibility of this coverage. Instead, issuers or third party administrators must provide separate payments for contraceptive services directly for plan participants and beneficiaries, without cost sharing. However, this is not to be done as an “opt-in” or “opt-out” system, in advance of actually needing the service. Rather, all participants and beneficiaries have access to this payment for services. Any participant and beneficiary can decide whether or not to use these services. If she does, then the issuer or third party administrator must provide payment for it. Calling this contraceptive coverage a rider or structuring it as an opt-in or opt-out makes it sound extra and optional, when it is required under the health care law. We encourage the State to ensure that plans are compliant with their federal regulatory requirements.

Conclusion

While HCFANY is pleased that many of the proposed rates, particularly in the individual market, will offer substantial savings over current market rates, thus bearing out the promise of the Affordable Care Act, we ask that the Department carefully consider all the filings for the reasons outlined above.

Very truly yours,

Elisabeth R. Benjamin, MSPH, JD
Health Care For All New York

cc: Troy Oechsner
John Powell