



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

James A. Dodrill
Insurance Commissioner

July 26, 2019

The Honorable Mac Warner
West Virginia Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305

Re: Comments Received to Proposed Amendments to 114 CSR 24

Dear Secretary Warner,

During the public comment period for above-referenced Legislative Rule relating to Medicare supplement insurance, the Offices of the Insurance Commissioner (“OIC”) of the Department of Revenue received comment letters from two health insurance carriers. The comment letters are attached.

The first comment letter was submitted by UnitedHealthcare Insurance Company. The insurer expressed support for the proposed changes made to Section 14 of the Rule pertaining to permissible agent compensation arrangements. The OIC appreciates the comment and will keep the amendments to Section 14 unchanged. UnitedHealthcare also noted that one of the documents located in Appendix C of the Rule contains a footnoting error. More specifically, for the page entitled “PLAN G or HIGH DEDUCTIBLE PLAN G,” in the “You Pay” column regarding “Hospitalization – additional 365 days,” there should be three asterisks (instead of two asterisks) after the listed benefit of “\$0” to designate the footnote at the bottom of the page. The OIC will amend the proposed rule to reflect three asterisks after the subject “\$0” and at the beginning of the corresponding footnote.

The second comment letter was received from Highmark West Virginia Inc. (hereinafter “Highmark”). The comments Highmark made are all regarding the following, newly proposed subsection of the Rule:

13.7. An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this rule based upon a structure or methodology with any groupings of attained ages greater than one year. The ratio between rates for successive ages shall increase smoothly as age increases.

Highmark makes five requests in regard to Subsection 13.7. First, Highmark requests that this language not be incorporated into the Rule “given the adverse financial impact of such change to



senior members who may not have the ability to absorb potentially relatively significant premium rate increases resulting from such change.” As set forth in Highmark’s comments, it currently rates Medicare supplement policies under five-year age bands. Absent an approved rate increase, the rate charged to its members during a five-year age band is the same for each of the five years and represents an average of the rates that would have otherwise been charged on a yearly basis. Highmark asserts that while some of its members would experience rate decreases under the rule change, such members would return to their current or higher rates within two years. Highmark further states that members at the top of its current age bands would experience rate increases, estimated in some instances to be over \$30.00 per month.

Subsection 13.7 of the Rule is based on language found in the National Association of Insurance Commissioners’ “Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act,” as amended in 2016. To assist states in the drafting of their Medicare supplement insurance regulations, the Model Regulation provides the following drafting note:

It has come to the attention of the NAIC that the use of attained age rating in the determination of rates in Medicare supplement policies may result in situations to which a regulatory response is desirable. States should assess their Medicare supplement marketplace to determine whether a regulatory response is needed. The following provisions may be included as a new subsection to Section 15. The first option prohibits insurers from attained age rating as a methodology for setting rates. The second option does not prohibit the use of attained age rating but requires Medicare supplement insurers who do use attained age rating as a rate setting methodology to apply the age component to its rates annually. The effective date of the regulation should provide sufficient time for insurers to re-rate approved policy forms in accordance with Section 15A and for the insurance department to approve (according to its rate filing practices and procedures), such re-ratings prior to the effective date of the regulation.

Option 1.

An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this regulation based upon attained age rating as a structure or methodology.

Option 2.

An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this regulation based upon a structure or methodology with any groupings of attained ages greater than one year. The ratio between rates for successive ages shall increase smoothly as age increases.

It has been noted by regulators that one of the difficulties with age band rating was whether such a rating structure could be disclosed in a manner that consumers understand. Carriers market five-year age bands as a way to provide rate certainty to their insureds. However, if the carrier applies for and receives a general rate increase during the five-year band, an insured's premium could increase regardless. This could be confusing to consumers who believed that their rates would remain unchanged for five years. It has further been suggested by regulators that if a state allowed attained age rating, it should consider prohibiting the banding of those rates to prevent a sudden and/or steep "bracket jump" at the end of the five years.¹ The OIC also believes that annual rating would be more accurate and provide for smoother rates over time. Annual rating, or one-year bands, do not "overprice" the product during the initial years or "underprice" the product during the final years as the five-year bands do, which could result in products being more costly to insureds if the insured becomes deceased or cancels the plan before the end of the five years. The OIC agrees that multiple-year age band rating is difficult for insureds to fully comprehend and that the increase in premiums when an insured moves from a five-year age band to the next five-year age band, or "bracket jumps," is more cumbersome to older insureds when compared to the more gradual, annual increase proposed by Subsection 13.7 of the Rule. Accordingly, the OIC intends to make no changes in response to Highmark's initial comment.

Highmark's second suggestion is that, as an alternative to removing Subsection 13.7 of the Rule, the language should be amended to permit its current rating structure based on five-year age bands to continue for renewing members, with the one-year attained age rating being applicable to new members. Highmark avers that such a provision would prevent its existing members from facing the disruption and anxiety that would result from an immediate or future rate increase. The OIC believes that having two separate rating structures for the same book of insurance business would cause unnecessary confusion among insurers, insureds and the OIC. Thus, no changes will be made in response to this comment.

In Highmark's third comment, it suggests another alternative to the elimination of Subsection 13.7 of the Rule. In order to mitigate the possible disruption to existing members, Highmark recommends that insurers be allowed to transition to one-year attained age rating over a period that is no greater than five years. The OIC agrees that the permissible rating structure set forth in Subsection 13.7 of the Rule would result in unexpected premium changes for some insureds who were previously rated based on five-year age bands. Additionally, requiring an immediate transition could result in having members who paid more during the first years of the five-year band never realizing that benefit. Therefore, the OIC will amend Subsection 13.7 of the Rule with the following underscored language:

An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this rule based upon a structure or methodology with any groupings of attained ages greater than one year. The ratio between rates for successive ages shall increase smoothly as age increases. For any insurer that rates Medicare

¹ It should be noted that at least eight states require community rating for Medicare supplement policies by prohibiting issue age and attained age rating. Additionally, upon information and belief, approximately four states require issue age rating and, therefore, do not permit attained age rating.

supplement policies or certificates under multiple-year age banding at the time of the effective date of this subsection, the insurer may transition to one-year age bands over a period of five (5) years or less.

Highmark further comments that if Subsection 13.7 of the Rule remains in place, the proposed rule should contain language specifying an implementation date that is tied to the current annual rate filing timeline in order to allow adequate time for an insurer to meet the proposed one-year attained age rating requirement. The OIC responds by stating that Subsection 13.7 of the Rule prohibits the use of multiple-year age bands but does not mandate that one-year age attainment rating be utilized by all insurers. Insurance companies may still rate Medicare supplement policies on acceptable rating methodologies such as an issue age rating structure or community rating structure. In further response to the comment, it is anticipated that the Rule will become effective at some point during the first few months of 2020, which should provide ample time for insurers to submit rate filings for policies that will be issued or renewed after the effective date of the Rule. In addition, the five-year transition period as set forth above would extend the timeframe by which certain insurers, including Highmark, would need to comply with Subsection 13.7 of the Rule. Accordingly, no changes will be made in response to this comment.

Highmark's final comment suggests that the Rule be amended, should Subsection 13.7 of the Rule remain, to provide that insurers have the discretion to apply a rate maximum based upon attainment of a specific age as a means to keep coverage more affordable for older West Virginians that are least able to absorb annual cost increases. The intent of the proposed Rule change is not to prohibit the discretionary practice of applying a rate maximum once a member attains a certain age. However, to be clear that the OIC does permit this practice, the OIC will again amend Subsection 13.7 of the Rule with the following underscored language:

An issuer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after the effective date of the amendment of this rule based upon a structure or methodology with any groupings of attained ages greater than one year. The ratio between rates for successive ages shall increase smoothly as age increases. For any insurer that rates Medicare supplement policies or certificates under multiple-year age banding at the time of the effective date of this subsection, the insurer may transition to one-year age bands over a period of five (5) years or less. Nothing herein shall prohibit an insurer from applying a maximum rate based upon the attainment of a specific age.

Sincerely,



Victor A. Mullins
Associate Counsel
West Virginia Offices of the Insurance Commissioner



June 21, 2019

Mr. Victor Mullins
P.O. Box 50540
Charleston, WV 25305-0540
victor.a.mullins@wv.gov

RE: Comments on Proposed Amendments to 114CSR24

Dear Mr. Mullins:

Thank you for the opportunity to comment on behalf of UnitedHealthcare Insurance Company regarding West Virginia's draft regulation to adopt the amendments made to the NAIC Medicare Supplement Model Regulation ("NAIC Model").

Page 38: We support West Virginia's changes to adopt the NAIC Model language under *Permitted Compensation Arrangements*.

Page 67: In reference to Plan G, in the "You Pay" column for *Hospitalization, additional 365 days*, there should be 3 asterisks (***) shown after the benefit (\$0) and the Notice below the chart.

Again, we appreciate the opportunity to review and comment on the draft regulation, and hope our suggestions have been helpful. Should you have any questions about our comments or would like to discuss anything concerning the comments or the draft regulation, you are welcome to contact me by phone or email.

Sincerely,

LisaAnne Keller

LisaAnne Keller, AIRC
Sr. Regulatory Affairs Analyst
Medicare & Retirement Insurance Solutions
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215-902-8261



July 10, 2019

Attn: Victor A. Mullins
Counsel, West Virginia Offices of the Insurance Commissioner

via: email to: victor.a.mullins@wv.gov

Re: Comment Period For Proposed Amendment to 114CSR24, adding new Section 13.7

Mr. Mullins:

Highmark West Virginia Inc. respectfully submits this letter within the written comment period ending July 10, 2019, for the proposed amendment to existing rule Title – Series: 114-24, specific to the proposed addition of new Section 13.7, adopting Option 2 of the National Association of Insurance Commissioners (“NAIC”) Model Rule 651 implementing the Medicare Access and CHIP Reauthorization Act of 2015 (“MACRA”) (“NAIC Model Rule Option 2”).

Proposed Section 13.7

NAIC Model Rule Option 2 prohibits issuers from presenting for filing or approval a rate structure for Medicare Supplement policies or certificates issued after the effective date of the amendment based upon a structure or methodology with any groupings of attained ages greater than one year. The proposed section 13.7 also requires that the ratio between rates for successive ages shall increase smoothly as age increases.

Comments

1. Highmark West Virginia Inc. (“Highmark WV”) requests that the NAIC Model Rule Option 2 not be incorporated into the proposed amendment to 114CSR24, given the adverse financial impact of such change to senior members who may not have the ability to absorb potentially relatively significant premium rate increases resulting from such change.

Highmark WV currently rates Medicare Supplement policy rates under five (5) year age bands (65-69, 70-74, etc.). Changing the current rating methodology to require imposition of one (1) year age bands would result in rate increases for a majority of Highmark WV members who may have relied on the certainty inherent in five (5) year rate bands when choosing the product that they deemed best suited to their medical and financial needs. While some members would experience immediate rate decreases due to implementation of the NAIC Model Rule Option 2, such members will return to their current or higher rates within two (2) years, minimizing any benefit of this change particularly in comparison to the negative financial burden imposed on those members who will see relatively significant increases. We estimate that our members at

the top of our current age bands (i.e., members who are 69, 74, and 79 years old) will experience the highest rate increases – in some instances over \$30.00 per month - as a direct result of incorporating the proposed Section 13.7 rating methodology.

In order to avoid this potential financial hardship to members, Highmark WV respectfully requests that the historical/current rating methodology of rate bands continue to be an option for issuers.

2. As a first alternative, Highmark WV wishes to reduce confusion and risk to existing members and thus requests that the current rating methodology based on five (5) year age bands continue to be allowed for renewing members while the NAIC Model Rule Option 2 apply only to new members.

As noted above, it is reasonable to presume that existing Medicare Supplement members, in selecting their plan, based their decision in part on the certainty inherent in five (5) year age banding. Should their premium unexpectedly increase, creating a financial hardship, these members may now be subject to risk and uncertainty of medical underwriting if they need to find a new issuer and/or choose a less expensive plan. If one (1) year age banding is applied only to new members, our existing members will not face the disruption and anxiety that is likely to result from an unexpected immediate or future rate increase.

3. As a second alternative, should the NAIC Model Rule Option 2 be applicable to all members (new and existing), Highmark WV wishes to mitigate to the extent possible disruption to existing members and thus requests that the proposed rule be further amended to allow issuers flexibility to transition to one (1) year age bands over no greater period than five (5) years.

An implementation period would allow a phased approach to rate changes, reducing the year over year impact, particularly for members most highly impacted by rate increases. Highmark WV would include, for review and approval as part of its 2020 rate filing submission, its plan to transition all Medicare Supplement members to the new rating structure over the prospective five (5) years.

4. If NAIC Model Rule Option 2 is incorporated into newly issued and/or renewing policies, Highmark WV wishes to minimize member confusion and implementation costs and thus requests that the proposed rule be further amended to specify an implementation date that is tied to the current annual rate filing timeline. Allowing the new rating methodology to be incorporated into the existing annual rate filing schedule and implemented on and after approval (as is done with any rate change today) allows for operational consistency and reduces associated administrative burden and costs. Expressly allowing for this minimal but critical flexibility, does not impede implementation and allows issuers a measure of certainty – as opposed to requiring issuers to possibly having to submit new rate filings using the proposed one (1) year age bands off-cycle and perhaps even prior to enactment in anticipation of an immediate or uncertain effective date.

Highmark West Virginia Inc.

Comments Re: Proposed 114CSR24 Regulatory Amendment (MACRA)

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5. Lastly, if NAIC Model Rule Option 2 is incorporated into the proposed rule, Highmark WV asks that the regulation be further amended to provide issuers the discretion to apply a rate maximum based upon attainment of a specific age. For example, Highmark WV currently offers the same rate to all Medicare Supplement members age eighty (80) and above as a way of keeping coverage more affordable for our Medicare Supplement members. If the ratio of rate to successive age increases as age increases with no permitted maximum, rates may become unaffordable for many older West Virginians, placing an unnecessary financial burden on those West Virginians least able to absorb such cost increases.

Highmark WV appreciates the opportunity to share its perspective and comment on the proposed amendment adding the NAIC Model Rule Option 2 to 114CSR24. If you have any questions, please contact me at linda.beckman@highmark.com, telephone: (304) 424-9858.

Thank you for your consideration.

Linda Beckman

Senior Counsel, Highmark West Virginia

cc: James Fawcett, President, Highmark West Virginia
Aaron Hahn, Manager, Actuarial Highmark Health