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Insurer Fights Back To HHS Characterization of its Premium Increases As “Excessive”

The U.S. Department of Health and Human Services (HHS) is seeking to use premium audit powers and its media access to publically shame Everence Insurance of Pennsylvania and other insurers for charging small businesses what HHS claims are “unreasonably high” premium increases.

According to HHS, its first federal rate review under the Affordable Care Act found that Everence’s 12 percent rate increase for small businesses in Pennsylvania.

After reviewing the rate based on its assessment of one year of data, HHS says independent experts determined the choice of assumptions the company based its rate increase on reflected national data rather than reliable and available state data. These assumptions resulted in what HHS characterizes as an “unreasonably high premium in relation to the benefits provided to small businesses by Everence Insurance of Pennsylvania.

HHS’s announcement regarding its findings about Everence Insurance of Pennsylvania marks the first of many reviews that HHS will perform in addition to insurance rate reviews already being done by states. HHS says it intends to review all health insurer proposals to raise rates by 10 percent or more this year.

Targeting health insurers proposing rate increases of 10 or more percent is likely to result in a significant number of reviews. A Kaiser Family Foundation Employer Health Benefits 2011 Annual Survey found average premiums increased 8% for single coverage and 9% for family coverage through May, 2011.

While the Affordable Care Act gave HHS the ability to conduct and publish health insurer rate reviews but does not grant HHS the authority to actually force covered health insurers to change their rates. While some state laws may give state regulators this authority, HHS’ authority remains limited to drawing public attention to carrier rate increases that HHS perceives as excessive.

In the absence of direct authority to force insurers to withdraw rate increases it views as objectionable HHS officials are restoring to media pressure. In the case of Everence Insurance of Pennsylvania, for example, HHS has widely publicized its findings. “We have called on this insurer to immediately rescind the rate, issue refunds to consumers or publicly explain their refusal to do so,” said Steve Larsen, director of the Center for Consumer Information and Insurance Oversight at the Centers for Medicare & Medicaid Services.

Companies that HHS finds have made excessive rate increases can either reduce their rate hikes or post a justification on their website within 10 days of the rate review determination.

Based on its website response, it appears that Everence Insurance of Pennsylvania plans to be the first insurer to take HHS to task for its finding. Everence Insurance of Pennsylvania is defending its rates and the methodology used to determine the rate increases. According to information posted [here](#) on its Website, Everence Insurance of Pennsylvania questioned the methodology applied by HHS.

Everence Insurance of Pennsylvania’s website explains:

“Everence based the rate increase on a two-year experience period; HHS used a one-year experience period. As a small insurer with years of expertise in rating small groups, Everence

has found that a longer experience period is a better measure for setting its rates. A one-year experience period may work for a large insurer; however, it would often result in unstable wide rate swings for the organization's small business clients. ...Using the two-year period, the loss ratio history in Pennsylvania has been approximately equivalent to the national ratio in the Everence plan. Understandably HHS did not come to that same conclusion because its methodology was different. Using one year of experience, the national ratio is not the same as in Pennsylvania.

Everence has applied this methodology in all its state rate filings this past year, and those states have all approved those rate increases.”

Everence Insurance of Pennsylvania also criticizes the decision by HHS to finalize and announce its findings from its audit of the insurer's rates without providing any opportunity for discussion of the review process, methodology or findings with HHS. It's website states:

“Everence expected a normal regulatory review process as used by states. Everence did not have the opportunity to discuss HHS's perspectives with them or methodology before the agency announced its determination.

“Everence regrets HHS made a determination on our rate increase in Pennsylvania before speaking to us,” said Gautsche. “States regularly talk to insurers throughout the regulatory review process. We suggest HHS consider adopting a similar step in their new review process.”

Insurers facing negative audit findings, employers and other consumers making insurance purchasing choices and policy leaders should critically evaluate HHS and other findings that rate increases are “excessive.”

With health care costs continuing to rise and insurers anticipating that changes in the marketplace driven by health care reform will produce added volatility in their market populations and that they will incur significant additional benefit and operational costs to comply with new federal and state mandates, many insurers argue they need to establish rates that allow for the development of appropriate reserves to meet these and other anticipated costs.

While holding insurers accountable for appropriately managing costs and price gouging is an important consideration, it is equally important to ensure that the premiums charged by insurers allow for retention of sufficient reasonable reserves and profits to provide a sufficient reserve for anticipated increases in claims and other costs that most industry experts expect to occur as insurers work to comply with new regulatory mandates imposed by the Affordable Care Act and other laws, as well as to maintain sufficient profitability to retain the shareholder investment necessary to continue healthy operations going forward.

While often attractive to employer or individual consumers, overly aggressive rate regulations of worker's compensation, property casualty, and other insurers by state regulators in the past have lead insurers to withdraw from markets or product lines, experience financial distress, cutback the quality of service, excessively tighten claims or other processing and other unanticipated adverse consequences.

It is important that all parties work to strike an appropriate balance between holding insurers accountable for their pricing and pushing insurers to set premiums at rates that do not allow for the prudent funding of ongoing obligations over a period of years.

For Help or More Information

If you need help reviewing and updating your health or other employee benefit, human resources, insurance, health care matters or related matters, please contact the author of this update, Cynthia Marcotte Stamer.

A Fellow in the American College of Employee Benefit Council, immediate past Chair of the American Bar Association (ABA) RPTE Employee Benefits & Other Compensation Group and current Co-Chair of its Welfare Benefit Committee, Vice-Chair of the ABA TIPS Employee Benefits

Committee, a council member of the ABA Joint Committee on Employee Benefits, and past Chair of the ABA Health Law Section Managed Care & Insurance Interest Group, Ms. Stamer is recognized, internationally, nationally and locally for her more than 24 years of work, advocacy, education and publications on employee benefit, human resources and related workforce, insurance and financial services, and health care matters.

A board certified labor and employment attorney widely known for her extensive and creative knowledge and experienced with these and other employment, employee benefit and compensation matters, Ms. Stamer continuously advises and assists employers, employee benefit plans, their sponsoring employers, fiduciaries, insurers, administrators, service providers, insurers and others to monitor and respond to evolving legal and operational requirements and to design, administer, document and defend medical and other welfare benefit, qualified and non-qualified deferred compensation and retirement, severance and other employee benefit, compensation, and human resources, management and other programs and practices tailored to the client's human resources, employee benefits or other management goals. A primary drafter of the Bolivian Social Security pension privatization law, Ms. Stamer also works extensively with management, service provider and other clients to monitor legislative and regulatory developments and to deal with Congressional and state legislators, regulators, and enforcement officials concerning regulatory, investigatory or enforcement concerns.

Recognized in Who's Who In American Professionals and both an American Bar Association (ABA) and a State Bar of Texas Fellow, Ms. Stamer serves on the Editorial Advisory Board of Employee Benefits News, the editor and publisher of [Solutions Law Press HR & Benefits Update](#) and other Solutions Law Press Publications, and active in a multitude of other employee benefits, human resources and other professional and civic organizations. She also is a widely published author and highly regarded speaker on these matters. Her insights on these and other matters appear in the Bureau of National Affairs, Spencer Publications, the Wall Street Journal, the Dallas Business Journal, the Houston Business Journal, Modern and many other national and local publications. You can learn more about Ms. Stamer and her experience, review some of her other training, speaking, publications and other resources, and register to receive future updates about developments on these and other concerns from Ms. Stamer [here](#).

Other Resources

If you found this update of interest, you also may be interested in reviewing some of the other updates and publications authored by Ms. Stamer available including:

- **[Employers Considering Using New IRS Voluntary Worker Classification Settlement Program To Resolve Payroll Tax Risks Must Also Manage Other Legal Exposures](#)**
- **[Participant Notification Added To Required Procedures For Church Plan Determination Letter Requests](#)**
- **[HHS Credits Affordable Care Act Adult Dependent Child Coverage Rule With Getting 1 Million Young Adults Health Coverage](#)**
- **[2010 Webcast Series on Federal Employer Employment of Persons With Disabilities Planned](#)**
- **[EBSA Plans To Include Health Care Reform Compliance In Health Plan Audits Beginning In FY 2012; Disputes OIG Criticism Of ACA Enforcement Efforts](#)**
- **[New Labor Department Video Tries To Educate Young Workers About Benefits & Benefit Rights](#)**
- **[Employer Assistance and Resource Network Offers Free Webinars For Employers During October In Honor of Disability Employment Awareness Month on Thursdays in October from 2:00 – 2:30 p.m. Eastern Time. Topics will include Employer Preparedness to Include Veterans with Disabilities](#)**
- **[HHS Projects Medicare Advantage Enrollment Will Rise As Premiums Decline In 2012; Plans Face Increased Regulation & Enforcement](#)**

- **HHS Credits Health Reform For Getting Health Coverage For Added 1 Million Young Adults**
- **4th Circuit Rejects Two Challenges To Affordable Care Act Constitutionality**
- **Stamer Named Fellow In American College of Employee Benefits Counsel**
- **ABA TIPS Section Appoints Cynthia Marcotte Stamer Vice Chair of Employee Benefits General Committee**
- **Affordable Care Act To Require Health Plans Cover Contraception & Other Women's Health Procedures In 2012**
- **Company Executives, Plan Sponsors & Others May Face Personal Liability When Others Defraud Plans or Mismanage Employee Benefit Plan Responsibilities**
- **EEOC Finalizes Updates To Disability Regulations In Response to ADA Amendments Act: Employers Should Manage Risks**
- **Employer Charged With Misclassifying & Underpaying Workers To Pay \$754,578 FLSA Back pay Settlement**
- **HHS Imposes 1st HIPAA Privacy Civil Penalty of \$4.3 Million**
- **NLRB Settlement Shows Care Necessary When Employers Use Social Networking & Other Policies Restricting Employee Communications**
- **Wage & Hour Law Settlements Highlight Rising Wage & Hour Risks of U.S. Employers**
- **OCR Requires Rhode Island DHS To Provide Translation, Other Services For Limited English, Other Language Impaired Accommodations**

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