

# Arkansas Insurance Department

Asa Hutchinson  
Governor



Allen Kerr  
Commissioner

## **BULLETIN NO.: 2-2015**

**TO: ALL LICENSED INSURERS, HEALTH MAINTENANCE ORGANIZATIONS, FRATERNAL BENEFIT SOCIETIES, FARMERS' MUTUAL AID ASSOCIATIONS OR COMPANIES, HOSPITAL MEDICAL SERVICE CORPORATIONS, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, PRODUCER AND COMPANY TRADE ASSOCIATIONS AND OTHER INTERESTED PARTIES.**

**FROM: ARKANSAS INSURANCE DEPARTMENT**

**SUBJECT: PUBLIC DISCLOSURE AND COMMENT REQUIREMENTS FOR RATE FILINGS FOR INDIVIDUAL AND SMALL GROUP PLANS SUBJECT TO THE RISK POOL**

**DATE: MARCH 13, 2015**

The Arkansas Insurance Department ("Department") issues the following Bulletin to provide subject issuers with State standards related to public disclosure and comments for rate filings to the Department in order to maintain an effective rate review program as required by the Centers for Medicaid and Medicare Services (CMS).

This Bulletin supplements AID Bulletin #9-2013 to address the timing and coordination of public disclosure, comments, and proprietary exclusions for rate review filings in the individual and small group health insurance markets for plans subject to AID Bulletin #9-2013. This Bulletin therefore does not amend the Department's rate review standards themselves for rate filings in the individual and small group market which consists of reviewing (1) whether the filing is compliant with State statutory rate standards in Ark. Code Ann. §§ 23-79-109, 23-79-110, 23-76-112 and 23-75-111; (2) whether the rate is unreasonable under 45 C.F.R. 154, and (3) whether it impacts the nineteen (19) criteria or factors as stated in AID Bulletin #9-2013. The provisions of this supplemental Bulletin do not apply to grandfathered plans which are subject to the filing provisions in AID Bulletins #'s 6A-2011, 7-2011 and 7A-2011. The provisions in this supplemental Bulletin also do not apply to non-grandfathered individual and small group plans, including association plans, which are transition policies under extensions to the ACA under AID Bulletins #'s 6-2014 and 7-2013.

The purpose of this Bulletin is to address the coordination and requirements for public disclosure and public comments for rate filing changes in order to maintain an effective rate review program at the state-level under standards required by the Centers for Medicaid and Medicare Services (CMS). The supplementary provisions of this Bulletin shall apply to all plans subject to AID Bulletin #9-2013 for plans with rates filed during the 2015 calendar year for coverage effective on or after January 1, 2016.

Under the ACA and Federal Regulation (45 C.F.R. 154.301), in order for a State to have an effective rate review program to review rates in the individual and small group markets, a State must provide public access to an issuer's rate filing justification of Part I (Uniform Rate Review Template), Part II (Consumer Friendly Written Narrative Justifying the Rate Increase), and Part III (Rate Filing Justification with Actuarial Memorandum) for rate filing increases above the State's threshold as determined under 45 C.F.R. 154.200. CMS has proposed that a State must provide access to information about proposed and final rate increases in Parts I, II and III of a rate filing justification from its website and have a mechanism for receiving public comments on those proposed rate increases. Therefore, CMS envisions the State to receive public disclosure of certain rate filing information prior to final approval of the rate by the Commissioner.

#### ***A. Public Disclosure***

In order to maintain an effective rate review program under CMS standards, the Department shall require that for rate increase filings in the non-grandfathered individual and small group market which exceed the State's threshold the issuer shall file the required rate filing justification to the Department through SERFF. The Department defers to the HHS final Rule, "Notice of Benefit and Payment Parameters of 2016," as to the timing for review of the rate filing on a "plan" basis. The Department shall then publish and post the rate filing justification within ten (10) business days following receipt of all rate filings in the relevant State market to the Department's Health Insurance Premium Rate Review Division (HIRRD) website, subject to the proprietary limitations as described in this Bulletin. Filings withdrawn before 10 business days following receipt of all rate filings in the relevant State market will not be posted. The issuers may make amendments and corrections to the justifications, or rectify incomplete information to the Department, as requested by the Department, through SERFF as required or needed in rate filing review at any time after the filing date. An issuer may only request a change as a result of an error by the issuer which the Department determines to be actuarially justified or properly supported by documentation illustrating the intended entries. The Department shall amend the publicly disclosed rate filing justification on the HIRRD website after receipt of such amendments on a reasonably prompt basis.

Rate filing justifications shall also be sent to HHS (through HIOS) at the time the issuer sends the rate increase to the State.

All justifications and parts of justifications not determined to contain proprietary information under Section D of this Bulletin, whether the plan will be sold on or off the Marketplace and without regard to the amount of the rate increase requested, will be posted to the HIRRD website no later than the first day of the individual Marketplace open enrollment. The Department also posts all finally approved rates for health plans on its respective compliance division website, whether sold on or off the Marketplace and without regard to the rate increase.

Issuers filing for rate approval for plans which have filed for no rate increase or for approval of a rate increase below the State's threshold shall not be subject to the requirement in Section A or Section C of this Bulletin; however, the Department may require an issuer to be subject to such requirements in the future if the issuer has developed a history or pattern of filing for rate increases below the State's threshold but which are in effect ultimately approved or negotiated above the State's threshold. Please note that an issuer filing for any rate approval from the Department, whether the rate is above or below the State's threshold, is still subject to the Department's required statutory review and approval. This Bulletin only addresses the extent to which an issuer has to provide the additional or supplementary items in Section A and C of this Bulletin.

### ***B. Common Filing Date***

In order to avoid or reduce anti-competitive behavior by issuers who are able to review publicly posted rate filings prior to that issuer's filing of rates, the Department requires that all issuers file such rates and justifications at the Department on the same date. This date shall be May 14, 2015 for plans effective on or after January 1, 2016. This common date and timeline shall apply to all plans submitting rates subject to the risk pool submitting rate increases on or off the Exchange or Arkansas Health Insurance Marketplace (Marketplace). This common date applies only to the filing of rates rather than form filing dates which are addressed in a separate QHP bulletin issued by AID. For plans effective in years on or after 2017, the Department shall issue a bulletin designating such date in advance each year.

### ***C. Public Comments***

The Department establishes a public comment period for thirty (30) days to begin from the date the rate filing justification is posted to the HIRRD website. Consumers may make comments during this period by mail, email or telephone. The HIRRD web site shall provide the email address, or electronic comment form, and mailing address and phone number to the public to describe the manner in which comments may be made about the proposed rate change. Appropriate comments submitted by consumers regarding rate filings will be posted to the HIRRD website. These comments, together with responses, if any, submitted by the filing issuer, will be made part of the rate filing. The public comments shall be provided and summarized to the Commissioner for his consideration in the review of the proposed rate change.

***D. Proprietary Information in Parts I and III in Rate Filing Justifications***

The Department continues to maintain as stated under AID Bulletin #9-2013 and by CMS under 45 C.F.R. § 154.215(h)(2) that issuers are not required to publicly disclose information contained in each rate filing justification which is a trade secret or confidential commercial or financial information as defined in HHS's Freedom of Information Act regulations in 45 C.F.R. 5.65. The Department further maintains that no issuer shall be required to publicly publish information in a rate filing justification which is also considered proprietary under Arkansas State law, including the Arkansas Insurance Code or is exempt from public disclosure under the State's Freedom of Information Act. Issuers claiming a proprietary exclusion to information in a rate filing justification shall adequately notate or indicate which information is proprietary to the Department in the appropriate SERFF filing notations. Issuers need to set out or explain to the Department the exact information which is claimed to be proprietary or a trade secret and specify the reasons why. The Department shall give an issuer written notice of at least five (5) business days, if it intends to publish any of the information in a rate filing justification which the issuer claims is exempt from publication.

For any questions regarding this Bulletin, please contact Booth Rand in the Legal Division of the Arkansas Insurance Department at 501-371-2820.

  
ALLEN KERR  
INSURANCE COMMISSIONER  
STATE OF ARKANSAS

March 13, 2015  
DATE