



601 Pennsylvania Avenue, N.W. South Building – Suite 900 - Washington, D.C. 20004-2601
Phone: 202-220-3172 Fax: 202-639-8238 Toll-Free: 1-866-360-7197
Email: nrlnmessage@msn.com Website: <http://www.NRLN.org>

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U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The National Retiree Legislative Network (“NRLN”), on behalf of its over 2 million retiree and pre-retiree members, is pleased to provide comments to the proposed rulemaking undertaken by the Department of Health and Human Services in its implementation of the Patient Protection and Affordable Care Act (“PPACA”) provisions directing the Secretary, in conjunction with the states, to establish a process for the annual review of unreasonable increases in premiums for health insurance coverage. The NRLN is a 501(c)(4) organization based in Washington, D.C., dedicated to representing the interests of retirees in the areas of pensions and other benefit protections. In addition to individual members, the NRLN is comprised of retiree organizations with members retiring from decades of employment and service in 30 U.S. companies, many of whom receive employer-sponsored health care benefits.

The NRLN strongly supports the Department’s efforts to address the adverse and often severe impact such premium increases can have on consumers. The NRLN membership is painfully aware of the impact of unreasonable increases in premiums for health insurance coverage as many fixed-income retirees in large group plans have experienced such increases because of the very high and increasing share of premium costs that are passed along to participants in retiree plans. While the proposed rule does not address large group plans in this specific rulemaking and has limited its scope to the small group and individual market, it has left open the possibility of a future proceeding which would address the large group market.

The NRLN urges the Department to include the large group retiree market in this proceeding, or in a further notice, for the limited purpose of addressing those situations where all or a substantial share of premium rate increases are being passed along to individual retirees. Since plan sponsors have capped their share of premium payments in many plans, retirees on fixed incomes are at least as vulnerable to high and sometimes unreasonable premium increases that are passed along to them to pay out-of-pocket. Retirees in large group plans already suffer from the harsh impact of plan sponsor cost increases in the form of higher deductible and copay requirements, loss of coverage and the inclusion of annual and lifetime limits. The NRLN urges the Department to extend premium rate review to the subset of retiree-only as well as retiree and active worker combined plans that impose all or a substantial share of current year premium rate increases on plan participants. We believe that it was the intent of Congress in enacting the consumer protections in the PPACA that insurance plans across all market segments should be protected, including large group retiree plans, and that the Department should respond accordingly. Nowhere in the statute does it say that individual retirees subject to premium rate shock should be excluded from the protection of rate review.

The rationale for limiting the scope of the rulemaking arbitrarily fails to protect similarly-situated consumers in retiree/active worker plans and retiree-only plans, and bases the exclusion on

outdated assumptions. The rationale for excluding large group plans across the board maintains that consumers in the large group market are viewed as more sophisticated purchasers who may have greater leverage and require less consumer protection. While that may be true when plan sponsors pay for premium rate increases, it significantly overestimates the role employer sponsors play in protecting retiree beneficiaries in cases where rate increases are imposed on individual retirees. The stated rationale also seems to presume that individual retirees are able to play a role in negotiating rate increases with insurance providers, while in reality plan sponsors unilaterally impose premium rate increases. For many employer-sponsored high-deductible plans, retirees absorb the majority of the costs of coverage and, increasingly, all rate increases. Only when the large deductible and co-pays are exceeded will an employer begin to provide insurance coverage. In the case of employer-sponsored health care plans, all cost increases frequently are paid by the retiree, leaving no incentive for an employer sponsor to negotiate with a provider about coverage or plan administration. There is no incentive for an employer sponsor to negotiate in favor of lower premiums for the retiree or to guard against unreasonable increases. As is the case in the individual market, so it is for retirees in the large group market.

As a practical matter, when a retiree pays for all (or most) of the insurance premiums and subsequent increases to a former employer, in practice, that relationship acquires the characteristics of an individual plan and no longer that of an employer-paid group plan for the purposes of the Act's consumer protections. In those situations where the employer-sponsor is making very limited, if any, contributions to premium increases, the employer-sponsor is acting as an agent of the insurance provider – and no longer has much if any incentive to seek out or negotiate the lowest premium increase. In fact, where the plan sponsor's cost per retiree has been capped, and all premium increases are imposed on retirees, the firm may actually have an incentive to impose unreasonable premium rate increases since it would reduce the plan sponsor's costs if individual retirees dropped their coverage as a result of the increases.

The urgent need for premium rate review to apply to plans where plan participants shoulder the cost of annual increases is evident in the fact that employer-sponsored retiree/combined or retiree-only plan premiums are increasing at an alarming rate. For example, AT&T has increased premium rates (monthly plan costs) for its combined active/retiree plan from 15 to 19% depending on the status of the retirees. Specifically, premiums for a Medicare eligible retiree with a non-Medicare eligible dependent, the rate went up 15.6%. For a non-Medicare eligible retiree with a non-Medicare eligible dependent, the rate went up 19.9%.

To determine rates for a specific insurance product in the case of company-sponsored healthcare coverage for employees and retirees in a plan exceeding 50 employees, it is the NRLN's view that premiums should be sufficient to cover the costs incurred by companies for the aggregate of employees and former employees/retirees, but that the costs must be reasonable and reflect anticipated claims and non-claim expenses known at the time of the rate increase.

Greater specificity is critical in determining which rates are subject to review and the parameters for determining whether premium increases are unreasonable. Section 2794 of the PHS Act does not define what makes a rate increase "unreasonable," nor does it specify the process that should be used for determining whether a particular rate increase is unreasonable (requiring that a review be conducted and a justification submitted). As such, we believe that the proposed regulation should provide a definition of an "unreasonable" rate increase, and outline a process that would be used by HHS when reviewing rate increases.

The NRLN asserts that the federal government has an additional incentive to review unreasonable cost increases borne by retirees in large group plans by virtue of the fact that company-sponsored plans benefit from the reimbursement program by accepting reimbursement for providing health

insurance benefits for retirees ages 55-64 and their families. One of the major thrusts of the program is to lower the costs of health insurance borne directly by participants and beneficiaries, in other words, protecting early retirees from unreasonable cost increases. Therefore, it stands to reason that the federal government should ensure through the regulatory process that the premium increases passed on to retirees are reasonable and that the goals and requirements of the program are being met.

SUMMARY

This rulemaking, or a subsequent proceeding, should encompass the needs of retiree consumers and should include reviews of employer-sponsored retiree health plans by the same standards as that of health plans for consumers in the small and individual market. Again, when the employee or former employee pays all or a substantial portion of the premium cost increase in an employer-sponsored plan, these plans should be treated the same as individual and small group plans for the purposes of the review of premium increases by the Department.

Respectfully submitted,



Bill Kadereit, President
National Retiree Legislative Network