

## **Model Regulations for an Affordability Standard**

Under the model statutory authority, the Insurance Commissioner could implement a regulatory affordability standard as a requirement for approval of health insurance rate filings. These model regulations provide for specific standards of affordability of health insurance premiums, including a provision that limits the rate of growth of hospital inpatient and outpatient rates in provider contracts.

### Affordability Standard for Hospital Contracts

- (A) Applicability. The Affordability Standard set forth in this Section shall apply to contracts between a health insurer and a hospital licensed in the state which are entered into, renewed, or amended on or after [January 1, 2022]. To ensure compliance with this Section, in the event of any hospital conversions, mergers, acquisitions, or changes of ownership or control, the health insurer shall, in terms of calculating the rate increase, treat the contract of the successor hospital or entity as a continuation of the contract of the predecessor hospital or entity with whom the health insurer had contracted.
- (B) Affordability Standard. Each health insurer shall include in its hospital contracts a provision that agrees on rates for each contract year. Review and prior approval by the Commissioner shall be required if either:
- (1) The aggregate rate increase, calculated as the weighted average increase for inpatient and outpatient services, is greater than the Consumer Price Index for All Urban Consumers: All Items Less Food and Energy ("CPI-Urban") percentage increase, as determined by the Commissioner by [October 1] each year based on the most recently published United States Bureau of Labor Statistics data, plus one percent (CPI-Urban + 1%), or
- (C) Separation of Inpatient and Outpatient Services. The Commissioner may, in his or her discretion, calculate average rate increases separately for inpatient and outpatient services and require that neither the inpatient nor the outpatient average rate increases in any hospital contract exceed CPI-Urban plus 1 percent.
- (D) Waiver. The Commissioner, upon petition by a health insurer for good cause shown, or in his or her discretion as necessary to carry out the purposes of the laws and regulations administered by the [Department], may modify or waive one or more of the requirements of this Section. Any such modifications shall be considered and made during the formal process of the Commissioner's review and approval of health insurance rates filed by the health insurer, or in accordance with a process that the Commissioner may specify.

(E) Monitoring and Enforcement.

- (1) Monitoring. Health insurers shall provide to the Commissioner in a timely manner and in the format requested by the Commissioner, such data as the Commissioner determines is necessary to evaluate the Affordability Standard and to monitor compliance with the Affordability Standard established in this Section. Such data may include any hospital or provider reimbursement contract, unit cost trends.
- (2) Consent to Public Release. Hospital contracts shall include terms that relinquish the right of either party to contest the public release, by state officials or the parties to the contract of the provisions of the contract demonstrating compliance with the requirements of this Section; provided that the health insurer or other affected party may request the Commissioner to maintain specific contract terms or portions thereof as confidential, if properly supported with legal and factual analysis justifying the claim of confidentiality.
- (3) Enforcement. If any health insurer fails to comply with the requirements of the Affordability Standard set forth in this Section, the Commissioner may take any or all of the following enforcement actions: deny approval of any rate filing application, condition approval on corrective action, require additional monitoring or reporting of data, and/or impose any penalties under the Commissioner's authority under [citation to code sections].