



EXPERT UPDATE



Premium Rating Inside and Outside the Public Exchange



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The Affordable Care Act provides that individual and small group premium rates charged by insurers, **both inside and outside the Exchange**, may vary with respect to a limited number of factors. We have known for quite awhile that insurers selling to individuals and small businesses will no longer be able to take health status or claims experience into consideration. Four factors will determine the rates charged for individuals and small group businesses beginning in 2014:

The Four Rating Factors:

- 1) Whether the plan covers an individual or family
- 2) Geographic rating area
- 3) Age of adults
- 4) Tobacco use

The age, tobacco use and geographic rate factors are multiplicative. So for example, we know that the final regulations permit insurers to charge 50% more for tobacco use. In addition, regulators have communicated that the maximum rate variation for age is 3:1. The oldest adults enrolled can not be charged more than 3 times the youngest adults enrolled. A 64 year-old tobacco user could be charged 4 ½ times the rate charged for the youngest adult who enrolls as a “non-tobacco” participant. For the purposes of family coverage, any rate variation for age and tobacco use must be applied based on the portion of the premium attributable to each family member.

Small companies that purchase health insurance both inside and outside the Exchange in 2014 will see this rating methodology at work when premiums are quoted. Many small businesses will see a sharp spike in premiums, some will see little difference and the remaining will see a drop in cost.

Several insurers are offering extended rate guarantees for businesses renewing this summer so that their current premium rates are locked in until December 1, 2014. This gives many employers another year before the new rating methodology impacts their health insurance rates.

Definition of Tobacco Use

The regulators proposed that the definition of “tobacco use” be consistent with the approach taken with respect to health-contingent wellness programs designed to prevent or reduce tobacco use. A common definition does not currently exist among states, which results in a wide variation in how health insurance companies define and assess tobacco use in insurance applications. After soliciting comments, regulators have decided to rely on the language that is used in The National Health Interview Survey, administered by the Centers for Disease Control and Prevention. This particular survey asks respondents if they use tobacco “every day, some days, or not at all?” In the final rule published February 27, 2013, HHS provided a definition for “tobacco use,” setting forth the meaning of “some days” to ensure clarity for insurers and consumers. Subsequently, “some days” has come to mean **“use of tobacco on average of four or more times per week within no longer than the past six months.”** The definition of tobacco use includes all tobacco products. Religious or ceremonial uses of tobacco (e.g. American Indians, Alaska Natives) are specifically exempt under the final rule.

HHS’s approach establishes a minimum standard to ensure consistency in the individual and small group insurance markets and will ideally simplify the administration of the tobacco rating factor. Insurers will have flexibility within the federal definition and as permitted by applicable state law, may have latitude to shorten the period of time from the last regular use of tobacco. States have the ability to define both the frequency of use per week and the look-back period in ways that are more consumer protective.

Regulators have indicated that they will consult with experts to develop a more evidence-based definition and they also intend to conduct testing of language and questions about tobacco use.

Stay tuned for more details. We expect more guidance and clarification about the subject matter covered above.

Resource: <http://www.gpo.gov/fdsys/pkg/FR-2013-02-27/pdf/2013-04335.pdf>

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5/23/2013

2