Consumers for Affordable Health Care

Advocating the right to quality, affordable health care for all Mainers.

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Attn: Karma Lombard
Bureau of Insurance
Maine Department of Professional and Financial Regulation
#34 State House Station
Augusta, Maine 04333-0034

Re: Comments Regarding Proposed 2024 Rate Filings

Dear Ms. Lombard,

The following are comments submitted on behalf of Consumers for Affordable Health Care ("CAHC") regarding the proposed rate filings for 2024 individual and small group health plans. We would like to thank you for the opportunity to comment on the proposed filings.

Consumers for Affordable Health Care is a nonpartisan, nonprofit organization that advocates the right to quality, affordable health care for all people in Maine. CAHC serves as Maine's Health Insurance Consumer Assistance Program, which provides toll-free access to certified application counselors who help Mainers understand their health coverage options and to apply and enroll in private health insurance. In addition, we also help people navigate private insurance plans, including helping people who have been denied insurance coverage to file complaints and private insurance appeals. It is with this experience that we offer the following comments.

As the Bureau is well aware, many families and small businesses in Maine struggle to afford health insurance premiums and out-of-pocket costs. Polling conducted in Maine found that Mainers faced significant affordability barriers when accessing health care.

- Almost six out of ten Mainers with commercial insurance are concerned that they will experience a gap in their coverage because they cannot afford health insurance.
- More than 90% of respondents who were uninsured cited expensive premiums as a barrier to obtaining health insurance.[1]

Premium rate increases will further exacerbate health care affordability barriers faced by Maine families and small businesses, especially when implemented in conjunction with increases to deductibles, out-of-pocket maximums, and other cost-sharing amounts. Maine's carriers have a history of asking for larger premium increases than were necessary, particularly for individual plans, as demonstrated by the sizeable rebates carriers have owed in recent years. In fact, the

[1] https://www.mainecahc.org/wp-content/uploads/2023/05/Polling-Views-of-Maine-Voters-On-Health-Care-Affordability.pdf

average MLR rebate amounts paid to people in Maine are often significantly higher than the national average for MLR rebate amounts. This is particularly true for individual plans in Maine, for which carriers had to pay members in Maine MLR rebates that were more than double the national average in 2020 and 2021.

Table 1. State and National Average MLR Rebates, by Year [2,3]

	Individual			Small Group		
	Total Rebates	**Average Rebate Per Person**	**National Average Rebate Per Person**	**Total Rebates**	**Average Rebate Per Person**	**National Average Rebate Per Person**
2021	$16,439,829	$420	$205	$1,634,268	$81	$169
2020	$42,263,547	$607	$279	$4,116,729	$368	$150

In addition to higher-than-average recent MLR rebates, carriers have requested rate increases in Maine this year that far outpace the national 6% average increase for Marketplace carriers.[4] A review of the carriers' rate filings suggests some areas that should be scrutinized closely by the Bureau, including closely assessing: their medical loss ratio histories, projected medical trend, geographic rating factors, administrative costs, profit margins and distribution of CSR loads.

Medical Trend

Carriers have an important role in ensuring that the cost of health care does not continue to rise without check. Serving essentially as the middleman between the consumer of health care goods and services and the providers of those goods and services, insurance companies have a responsibility to ensure their members can access high quality care at reasonable prices. Operating in increasingly narrower network markets, the role of steering patients to lower-cost higher-quality care, is primarily the responsibility of insurers, rather than consumers who have very little ability to meaningfully "shop" for the vast majority of their health care costs.[5] If insurers are not successful in negotiating fair prices and decreasing health care costs, without

[2] https://www.cms.gov/files/document/2021-rebates-state.pdf
[3] https://www.cms.gov/files/document/2020-rebates-state.pdf
[4] https://www.healthsystemtracker.org/brief/how-much-and-why-2024-premiums-are-expected-to-grow-in-affordable-care-act-marketplaces/#Overall%202024%20proposed%20rate%20change%20among%20ACA%20Marketplace%20plans,%20by%20insurer
[5] Improving Value, Altarum Health Care Value Hub. Available at: https://www.healthcarevaluehub.org/improvingvalue/who-target.

another cost-containment system in place, prices will continue to rise at rates that are simply unsustainable for Maine people to keep up with and afford.

We encourage the Bureau to carefully analyze carrier's anticipated cost trends for 2024 and, where discrepancies exist between carrier projections and other recent data available on anticipated health care and prescription drugs cost trends, we urge the Bureau to require carriers to provide ample data showing where, how, and why their projections (or experience) differ from these national trends. We also suggest that the Bureau ask carriers what measures they are taking – such as rate negotiations, provider payment structures, or benefit designs to reduce cost growth and improve health outcomes for their members, rather than simply passing those costs back to their enrollees in the form of increased premiums.

We also strongly urge the Bureau to require greater transparency and impose greater standardization in the development of medical trend estimates within Maine. There is significant variation in the cost and utilization trend estimates among the carriers, often with little explanation as to how the trend was developed.

Geographic Rating Factors

Table 2. Proposed Geographic Rating Areas by Carrier for Individual and Small Group Plans

Rating Area	Anthem	CHO	Harvard Pilgrim	Taro Health	Aetna Health	Aetna Life	United Healthcare	United Healthcare of NE	HPHC
Area 1	0.9364	0.938	0.955	0.993	0.925	0.925	0.9515	0.9515	0.9550
Area 2	1.0086	0.994	1	1.0452	0.98	0.98	0.974	0.974	1.0000
Area 3	1.0423	1.05	1.03	N/A	1.05	1.05	0.9931	0.9931	1.0300
Area 4	1.1704	1.169	1.1937	N/A	1.1	1.1	1.1234	1.1234	1.1937

According to the analysis commissioned by the Bureau and conducted by Wakely in 2022, carriers in Maine applied the highest geographic rating factors to rating area 4 (Hancock, Aroostook, and Washington counties) and the lowest geographic rating factors in area 1 (Cumberland, York, and Sagadahoc counties). The analysis also found there was an inverse relationship between higher geographic rating factors and medical cost ratio. Although area 4 had the highest geographic rating factor, it also had the lowest average medical cost ratio. Conversely, are 1 had the lowest rating factor, but had the highest medical cost ratio. This suggests that regional differences in the costs of providing care are not the bases for the proposed geographic rating factor.

The Unified Rate Review Instructions published by CMS describes rating factors that may be used to develop the Consumer Adjusted Premium Rate, as allowed in 45 CFR § 147.102,

including geographic rating areas. The CMS instructions require that "The geographic rating factors reflect **only differences in the costs of delivery** [emphasis added] (which can include unit cost and provider practice pattern differences) and do not include differences for population morbidity by region." The instructions also state that "The Actuarial Memorandum should explain how the geographic rating factor is calculated and state the rating factor only reflects differences in the costs of delivery (which can include unit cost and provider practice pattern differences) and not differences in population morbidity by geographic area."

Contrary to the URR Instructions published by CMS, Anthem's geographic rating factors do not reflect only the differences in the costs of delivery between rating areas. Anthem's response to questions from the Bureau on 7/14/23 states, "Setting area factors is not a strictly mathematical exercise but reflects many quantitative and qualitative inputs in a non-formulaic evaluation." Anthem explicitly cites its own competitive position within the market as one of the considerations used to develop its geographic rating factors: "In addition to the historical experience, Anthem also uses other information to determine the appropriate rating period area factors including historical premium area factors for both Anthem and other carriers to avoid unintended competitive pricing distortions […]"

Anthem's methodology, which charges Mainers living in northern and rural communities higher premiums in order to subsidize lower premiums in southern areas, does not comply with CMS requirements to base geographic rating factors solely on the differences in the costs of delivery.

Table 3. Anthem Area Rating Factors and Loss Ratios

Area	Membership Distribution	Risk Adjusted Loss Ratio	Area Factors	
	2022	2022	2023	2024
1	46.9%	80.5%	0.9233	0.9364
2	18.1%	82.9%	0.9847	1.0086
3	20.9%	76.2%	1.0076	1.0423
4	14.0%	59.6%	1.1996	1.1704

Among the companies that will offer plans in rating area 4, all impose higher cost burdens on rating area 4. While this rating practice is not new, the Wakely analysis demonstrates that Maine families and small businesses living and operating in these northern and rural communities are likely being overcharged in order to subsidize lower premiums in southern, more urban counties. This is especially egregious considering the counties in area 4 have much higher uninsured rates for people under 65 compared to counties in areas 1 and 2. In fact, Washington County, which is in area 4, has the highest rate of uninsured people under 65 of all counties in Maine.

Table 4. 2019 Uninsured Rate (Under 65 Years) in Rating Areas 1 & 4[6]			
Area 1		**Area 4**	
Cumberland	7.8%	Aroostook	12.7%
Sagadahoc	8.9%	Hancock	11.4%
York	8.6%	Washington	**16.2%**

Although the carriers have all attested in their Actuarial Certifications that Geographic rating factors reflect **only** differences in the costs of delivery and do not include differences in population morbidity by geographic area, as required, none have provided any data to support this. Given the findings of the Wakely analysis, and in the absence of any data to support carriers' claims that area factors accurately reflect differences in costs of delivery, the Bureau should assume there is overcharging in area 4, and should thus find the rates, as currently proposed, to be unjust and unfair.

Administrative Costs & Profit

Table 5. After-tax Profit									
	Anthem	**CHO**	**Harvard Pilgrim**	**Taro Health**	**Aetna Health**	**Aetna Life**	**United Healthcare**	**United Healthcare of NE**	**HPHC**
% of premium	2.95%	1.50%	1.00%	3.72%	4.74%	4.74%	1.58%	1.58%	1.00%
PMPM	$18.72	$10.92	$6.72	$22.96	$57.06	$36.98	$11.65	$11.34	$6.97

The profit and risk load included in the proposed rates vary significantly by carrier. Proposed rates for Aetna Health and Aetna Life, for example, are more than five times the profit and risk load proposed by Harvard Pilgrim and HPHC. While not quite as high as Aetna, Anthem has proposed to keep nearly 3% for profit and risk, almost three times the amount as Harvard Pilgrim, and nearly double the profit and risk amounts proposed by CHO and United Healthcare. As a well-established, large, national company, there is no reason Anthem needs to retain nearly two or three times more for profit and risk than other carriers in Maine.

Anthem's requested profit margin is nearly double to three times as high as the profit margins requested by other established insurers offering plans in Maine, Community Health Options, Harvard Pilgrim, and United Healthcare. Anthem is also the largest health insurance carrier operating in Maine and, as such, would be the most able to absorb unexpected costs comparatively to other smaller insurers, and thus does not need to build such an excessive buffer into their profit margin. As a well-established, large national company, Aetna is similarly well-positioned to absorb any potential unexpected costs comparatively to other smaller and

[6] https://www.census.gov/data-tools/demo/sahie/#/?s_statefips=23&s_stcou=23001,23003,23005,23007,23009,23011,23013,23015,23017,23019,23021,23023,23025,23027,23029,23031&s_year=2019

newer insurers. Especially in a year when such high increases in rates are being proposed, Aetna and Anthem's requested profit margins should be deemed as excessively high.

We also encourage the Bureau to scrutinize carriers' other administrative costs, such as administrative pharmacy benefit manager (PBM) expenses. It is noteworthy that Taro Health, the newest and smallest carrier offering plans in Maine, is able to secure lower PBM compensation fees for its members than many of the other larger carriers in Maine, such as Anthem, CHO, and Harvard Pilgrim. For example, Anthem's PBM administrative costs are listed as $9 PMPM. It is surprising that the PMPM dollar amount Anthem projects as the cost for their PBM is double the amount projected by Taro Health. Considering Anthem's size and market share, one would expect it should be able to better control such types of expenses given its enormous negotiating power, compared to an insurance company that projects to cover only a fraction of Anthem's total membership. It is also worth noting that in 2020 Anthem changed its PBM to IngenioRx, which is an Anthem subsidiary and has been credited nationally with bolstering Anthem's profits.[7] We urge the Bureau to closely examine the financial incentives that exist between carriers and PBMs and whether existing agreements serve the best interests of members.

Table 6. PBM Administrative Costs[8]

	Anthem	CHO	Harvard Pilgrim	Taro Health	Unitsed Healthcare	United Healthcare of NE	HPHC
PMPM	$9	$8	$6	$4.50 [9]	$2.21	$2.71	$5.89

CSR Silver Loading

All carriers have stated that they have utilized silver loading in their proposed 2024 rates and thus have built in the full cost of providing CSRs to eligible enrollees into the premium rates for only their silver Marketplace plans. However, given the market incentive for carriers to offer the lowest cost or second-lowest cost silver plan that will be used as the benchmark for APTC calculations, there is a potential for carriers to engage in a "race to the bottom" in attempts to offer the cheapest silver plans. When this occurs, it is to the detriment of consumers

The Affordable Care Act requires carriers to set premiums that reflect the characteristics of a particular plan, not the characteristics of the population expected to enroll in that plan. Plans

[7] https://www.reuters.com/article/anthem-results-idCNL4N2U628P

[8] We were not able to find PBM administrative costs expressed as a PMPM amount in filings submitted by Aetna Health and Aetna Life.

[9] Taro did not include any amount for PBM compensation on its Major Medical Data Collection spreadsheet. However, in its PBM Compensation memo it states, "Based on information provided to Taro Health by SmithRx, the actual cost to Taro Health was estimated to be $4.50 per member per month (PMPM) for plan year 2024." The PMB compensation information for Taro Health included in table 6 is based on the information Taro provided in its PBM Compensation memo.

with more generous coverage should have higher premiums than plans that offer less generous coverage. However, variations in metal-level premiums do not always seem to correspond appropriately to differences in coverage generosity. This can increase premium costs for consumers, both among subsidy-eligible and ineligible populations. An analysis published by Families USA estimated the impacts of realigning metal-tier premiums based on coverage generosity in 2020 Marketplace plans. The analysis found metal-tier premium realignment would have saved Marketplace enrollees in Maine an average of $739, amounting to $46 million of total projected premium savings on 2020 Marketplace plans in Maine.[10]

We encourage the Bureau to adopt the following policies to prevent premium misalignment in Maine:

- Require induced demand assumptions used by carriers to project higher utilization when plans have lower overall cost sharing.
- Prohibit carriers from varying metal-level premiums based on their past utilization in a particular metal tier. Carriers should rely instead on the utilization patterns experienced by all enrollees pooled together, without distinguishing between silver, gold, and bronze utilization patterns.
- Establish standardized metal level and CSR variant enrollment projections.

CAHC sincerely appreciates the opportunity to provide comments on the 2024 proposed rate fillings. Thank you very much for consideration of our concerns with the proposed rate changes. If you have further questions, please contact me at kende@mainecahc.org or 207-480-2136**.**

Sincerely,

Kate Ende
Policy Director
Consumers for Affordable Health Care

[10] https://familiesusa.org/resources/misalignment-between-premiums-and-coverage-generosity-imposes-heavy-cost-burdens-on-consumers-in-health-insurance-exchanges/