STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE:	)	
	)	
HARVARD PILGRIM HEALTH CARE, INC. 2017 INDIVIDUAL HMO RATE FILING	)	**DECISION AND ORDER**
	)	
	)	
Docket No. INS-16-1003	)	

I. INTRODUCTION

I, Eric Cioppa, Superintendent of Insurance ("Superintendent"), issue this Decision and Order after consideration of the Harvard Pilgrim Health Care, Inc. ("Harvard Pilgrim") 2017 rate filing and proposed modifications for its individual HMO Products ("Individual Products").

As required by law, Harvard Pilgrim proposes to rate all of its Individual Products on a combined basis as a single risk pool. By its initial filing, Harvard Pilgrim proposed an average rate increase of 18.7%, with a range of 14% to 21.1% depending on deductible level and type of contract. On July 15, as part of its pre-filed testimony in the proceeding, Harvard Pilgrim made changes to its request that resulted in a revised average increase of 21.1%, with a range of 16.3% to 23.6%. At the time of the initial filing, total in-force enrollment was approximately 7,100 individuals who will be affected by the proposed rate revisions. Harvard Pilgrim requests that its proposed rate revisions become effective on January 1, 2017.

For the reasons discussed below, I am approving Harvard Pilgrim's revised average rate increase of 21.1% as requested.

II. PROCEDURAL HISTORY

On May 10, 2016, Harvard Pilgrim filed a request to increase rates for its Individual Products. The Bureau of Insurance designated the matter as Docket No. INS-16-1003.

On May 16, 2016, the Superintendent issued a Notice of Pending Proceeding and Public Hearing, which scheduled a public hearing for July 28, 2016. The Hearing Notice also established an intervention deadline, but no person applied (timely or otherwise) to intervene as a party in the proceeding.

Also on May 16, 2016, the Superintendent issued a Procedural Order establishing procedures for the conduct of the proceeding.

The Superintendent issued several information requests and made oral requests at hearing, to which Harvard Pilgrim filed responses.

On June 3, 2016, the Superintendent issued an Order Regarding Rate Revisions setting a uniform deadline for all insurers to file revised rate requests, if any.

On July 7, 2016, the Superintendent issued a Second Order Regarding Rate Revisions, to which Harvard Pilgrim responded on July 15, 2016.

On July 15, 2016, Harvard Pilgrim filed the pre-filed testimony of Laura Pendergast and Edward J. Kane and supporting exhibits.

The public hearing was held as scheduled on July 28, 2016, and was conducted entirely in public session. Members of the public had an opportunity to make either sworn or unsworn statements for consideration by the Superintendent. Members of the public also submitted written comments outside the public hearing, which the Superintendent designated a part of the record of the proceeding. The Superintendent has read each of the written comments provided. To the extent that unsworn oral or written statements comment on facts that are in the record,

they shall be considered for their persuasive value in the same manner as legal arguments and other comments submitted by the parties. However, such statements are not evidence and the Superintendent may not consider them in making factual findings. 5 M.R.S. § 9057.

At hearing, Harvard Pilgrim presented testimonial evidence from Laura Pendergast and Edward J. Kane. Also at hearing, Harvard Pilgrim supplemented the pre-filed testimony of Edward J. Kane. The Superintendent admitted into evidence Harvard Pilgrim's pre-filed testimony and exhibits as well as Harvard Pilgrim's responses to discovery filed throughout the proceeding. There were no objections to any of the evidence being admitted into the record of the proceeding.

After Harvard Pilgrim rested its case at hearing, the Superintendent adjourned the hearing for the submission of responses to certain hearing panel inquiries and for the filing of a written closing statement.

On August 4, 2016, Harvard Pilgrim filed its written closing statement together with its responses to the hearing questions.

On August 12, 2016, Harvard Pilgrim filed a motion to reopen the record of the proceeding for the purpose of submitting a supplemental written closing statement, and simultaneously filed a supplemental written closing statement.

Harvard Pilgrim has provided direct written notice by mail to every affected policyholder advising of the proposed rate increases.

III. LEGAL STANDARD

Harvard Pilgrim is required by 24-A M.R.S. § 2736(1) to file proposed premium rates for its individual health insurance products with the Superintendent. Because Harvard Pilgrim has requested a rate increase of 10% or more, thereby triggering the threshold for review established

under the Affordable Care Act (ACA), *see* 45 C.F.R. § 154.200, the rate filing is subject to the Superintendent's review and approval pursuant to 24-A M.R.S. § 2736(1). *See* 24-A M.R.S. § 2736-C(2-B). The Superintendent may approve the filed rates only if they are not excessive, inadequate, or unfairly discriminatory. 24-A M.R.S. § 2736(2). In addition, pursuant to 24-A M.R.S. § 2736-C(5), the Superintendent shall disapprove the rates unless it is anticipated that the rates will yield a loss ratio of at least 65% as determined in accordance with accepted actuarial principles and practices. That is, expected claims payments must be at least 65% of premium. Harvard Pilgrim, as the proponent of the filed rates, bears the burden of proving by a preponderance of the evidence that the proposed rates meet statutory requirements. 24-A M.R.S. § 2736-A.

IV. RULINGS

I hereby make the following post-hearing rulings:

1. Harvard Pilgrim's post-hearing responses (filed on August 4, 2016) to the hearing panel inquiries are admitted into the record of the proceeding, with no objection by Harvard Pilgrim.

2. Harvard Pilgrim's August 12 motion to reopen the record of the proceeding is GRANTED, and the supplemental written closing statement is a part of the record of the proceeding.

V. DISCUSSION

For the reasons set forth below, I find that the proposed rates filed by Harvard Pilgrim in this proceeding are not excessive, inadequate, or unfairly discriminatory.

A. Overview and Recent Market-wide Changes

Under the Affordable Care Act, an insurer may not implement an unreasonable rate increase unless it files and publishes a justification for the increase.[1] Under the Maine Insurance Code, an insurer may not implement an excessive or unfairly discriminatory rate increase at all.[2]

All rate increases in excess of 10% have been specifically identified as "potentially unreasonable" within the meaning of Bureau of Insurance Rule 940 and the regulations implementing the Affordable Care Act.[3] Heightened scrutiny for increases of this magnitude is required in recognition of the hardship that significant price increases pose to consumers.[4] However, whether a rate increase is actually excessive depends on many factors. In some circumstances, a rate could be excessive even though it is well under the 10% threshold, while in others, a double-digit rate increase is unquestionably necessary. Each rate request must be evaluated on a case-by-case basis, considering both insurer-specific and market-wide factors.

This year, all four insurers in Maine's individual market are requesting rate increases in excess of 10%, with their average increases ranging from 15.6% to 25.5%. Many states are seeing even larger requested increases. One reason for these increases is "trend" – the year-to-

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[1] Public Health Service Act, § 2794(a)(2).

[2] 24-A M.R.S. § 2736(2). Maine law also prohibits inadequate rates, which means that when an increase is necessary to prevent harm to the public, such as a potential threat to the financial integrity of an insurer, it is not only permitted but required. *See Anthem Health Plans of Maine, Inc. v. Superintendent of Insurance*, 2012 ME 21, ¶¶ 11–21 (approving the Superintendent's interpretation of the "not inadequate" standard).

[3] Bureau of Insurance Rule 940, § 4(F); 45 C.F.R. § 154.200(a)(1).

[4] Sometimes, it is suggested that the Affordable Care Act's premium subsidies make the size of the premium increase less important, because for many consumers, most or all of the increase is paid for by the taxpayers. However, many consumers do not qualify for these subsidies. Others would be forced to change plans to take full advantage of the available subsidies, because the subsidies are based on the price of the second-cheapest Silver plan, which could be a different plan from year to year. For subsidized consumers who wish to keep their current plans, the percentage increase in the net amount they pay could in some cases be even higher than their underlying gross premium increase.

year increase in the underlying cost of health care – but trend alone would not support rate increases of this magnitude. While this year's rise in health care costs has been significant, and is expected to continue into 2017, it remains under 10% according to all four insurers' trend projections, which range from 7.2% to 9.6%.

Unfortunately, additional factors have combined this year to yield indicated rate increases substantially in excess of the health care cost trend. One major issue affecting the entire market is the discontinuance of the federal reinsurance program. This three-year transitional program, financed by assessments on the entire health insurance market, reimbursed insurers for a substantial portion of their high-cost claims. In 2016, the final year of the program, the reinsurance absorbs half of each claim in excess of $90,000, up to a cap of $250,000 per claim. Harvard Pilgrim projects that the loss of these reimbursements in 2017 will raise its claim costs by an additional 5.8%, above and beyond the increase required to keep pace with the underlying cost of health care.

There are also some additional cost factors affecting this year's premium increase to a lesser degree, as discussed more fully below in the actuarial analysis.[5]

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[5] The ACA regulations, at 45 C.F.R. § 154.301(4), enumerate the following factors that can combine to drive premium increases:

> (i) The impact of medical trend changes by major service categories.
> (ii) The impact of utilization changes by major service categories.
> (iii) The impact of cost-sharing changes by major service categories, including actuarial values.
> (iv) The impact of benefit changes, including essential health benefits and non-essential health benefits.
> (v) The impact of changes in enrollee risk profile and pricing, including rating limitations for age and tobacco use under section 2701 of the Public Health Service Act.
> (vi) The impact of any overestimate or underestimate of medical trend for prior year periods related to the rate increase.
> (vii) The impact of changes in reserve needs.
> (viii) The impact of changes in administrative costs related to programs that improve health care quality.
> (ix) The impact of changes in other administrative costs.

B. Trend

Trend is the rate at which Harvard Pilgrim's overall healthcare costs including unit costs and utilization are projected to increase during the rating period. Harvard Pilgrim's proposed 2017 rates incorporate an annual pricing trend of 9.5%. This trend reflects a one percentage point increase over the company's 2016 assumed trend rate. Harvard Pilgrim stated that the increased trend reflects increases in utilization and pharmacy costs. Based on the evidence presented, I find the proposed 9.5% trend will not cause the rates to be excessive or inadequate.

C. Adjustments

Harvard Pilgrim made several adjustments to reflect the changes between the assumptions made for the 2016 rates and its expectations for the 2017 projection period. I find that none of these adjustments would cause the rates to be excessive or inadequate.

1. Morbidity Adjustment

Harvard Pilgrim's filing includes a 13.4% adjustment for morbidity. The Company stated that this increase is necessary because its volume of individual business is too small to be statistically credible and its current pricing is based on small group experience. Harvard Pilgrim's morbidity adjustment was derived by looking specifically at their experience of groups of 1 and 2 employees and comparing that population with the overall small group experience. Then they applied a second adjustment of 2.7% to account for expected utilization characteristics that are unique to the individual market population. The combined 13.4% morbidity adjustment

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(x) The impact of changes in applicable taxes, licensing or regulatory fees.
(xi) Medical loss ratio.
(xii) The health insurance issuer's capital and surplus.
(xiii) The impacts of geographic factors and variations.
(xiv) The impact of changes within a single risk pool to all products or plans within the risk pool.
(xv) The impact of reinsurance and risk adjustment payments and charges under sections 1341 and 1343 of the Affordable Care Act.

also includes provisions for the expected increase in morbidity in the statewide individual market over the 2016 population.

2. Changes in Federal Reinsurance Recoveries

Harvard Pilgrim reduced its 2016 individual rates by 5.8% for expected reinsurance recoveries. Because the Federal Reinsurance program is no longer in effect for 2017, Harvard Pilgrim's rates were adjusted to reflect this increased risk. Harvard's rates no longer reflect the credit for these recoveries.

3. Benefit Modifications

Harvard Pilgrim proposed numerous benefit modifications. *See* Exhibit A, Table 14. The value of each adjustment is below the 5% statutory threshold.[6]

D. Contribution to Surplus

Harvard Pilgrim has requested that its 2017 individual rates include a 1% contribution to surplus, which is a nonprofit insurer's equivalent of a for-profit insurer's margin for profit and risk. Harvard Pilgrim's surplus contribution is unchanged from 2016, and is well within a range that the Superintendent has considered reasonable for this line of business. I find that Harvard Pilgrim's 1% surplus contribution will not cause the rates to be excessive or inadequate.

E. Administrative Costs

Harvard Pilgrim's filing provided for administrative costs of $65.72 per member per month (PMPM), or 14.08% of premium, for rates effective January 1, 2017. This is a slight increase for 2017 over rates filed for 2016 ($62.70 PMPM, or 16.05% of premium). I find that Harvard Pilgrim's administrative costs will not cause the rates to be excessive or inadequate.

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[6] Because each adjustment is below the 5% threshold, the product changes are deemed to be minor modifications under the law (and not product discontinuances). *See* 24-A M.R.S. § 2850-B(3)(I).

VI. FINDINGS AND CONCLUSIONS

On the basis of a preponderance of the credible evidence in the record, and for the reasons set forth in Section V above, I find and conclude that Harvard Pilgrim's proposed rates are not excessive, inadequate, or unfairly discriminatory.

VII. ORDER

Pursuant to the provisions of 24-A M.R.S. §§ 2736, 2736-A, 2736-B and authority otherwise conferred by law, I hereby ORDER:

1. The rates filed May 10, as revised, by Harvard Pilgrim for its Individual Products are APPROVED; provided, however, that the effective date of those rates must assure a minimum of 30 days' prior notice to policyholders.

VIII. NOTICE OF APPEAL RIGHTS

This Decision and Order is final agency action of the Superintendent of Insurance, within the meaning of the Maine Administrative Procedure Act, 5 M.R.S. § 8002(4). It may be appealed to the Superior Court in the manner provided for by 24-A M.R.S. § 236, 5 M.R.S. §§ 11001 through 11008, and M.R. Civ.P. 80C. Any party to the proceeding may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within forty days after the issuance of this Decision and Order. There is no automatic stay pending appeal. Application for stay may be made in the manner provided in 5 M.R.S. § 11004.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

August 16, 2016

ERIC A. CIOPPA
Superintendent of Insurance