

Guidance Regarding Rate Guarantees and New Business Discounts

The Department of Financial Services (“DFS”) has received questions as to whether issuers may guarantee experience-rated large groups that the premium rate will not increase more than a specified percentage for one or more years following the initial plan year (“rate guarantee”). In addition, DFS has been asked whether issuers may discount premiums for a group newly enrolled with an issuer (“new business discount”).

Community-Rated Markets: New business discounts and rate guarantees are not permitted in the community-rated market. Those arrangements violate New York Insurance Law §§ 3231(a) and 4317(a), which govern individual and small group health insurance policies and contracts. Community rating requires that the premium for all persons covered by a policy or contract form be the same based on the experience of the entire pool of risks of all groups covered by the issuer. When a rate guarantee or discount is applied to a group’s premium for coverage, the premium is no longer based solely on the experience of groups covered by the issuer.

Experience-Rated Markets: New business discounts, rate guarantees, and similar modifications of premium are also not permissible in the experience-rated large group market. 45 CFR § 144.103 defines “plan year” as a single, 12-month year. Accordingly, all rate filings for such groups must be for a one-year term. Multi-year rating for large group comprehensive policies is therefore not permitted.

Insurance Law § 4308(b) provides that rating variables must not result in premium rates that are excessive, inadequate, or unfairly discriminatory. Insurance Law § 4235(g) provides that insurance policies must be self-supporting on reasonable assumptions as to morbidity, claim rate, interest and expense. 11 NYCRR 52.40(e)(2)(ii)(b), the regulation implementing these statutes, provides that experience-rated large group premium rates must be actuarially justified and supported by credible data that is representative of the risk for each contract for the applicable year.

Moreover, Insurance Law §§ 4224 and 4308(b) and 11 NYCRR § 52.40(f)(1)(i) require that premium rates be consistently applied to all similarly situated groups and across all rating years so that rating variables do not result in premium rates that are unfairly discriminatory.

Rate guarantees and similar arrangements that promise an insured group a specified rate or a ceiling on rate increases for a period beyond the applicable 12-month plan year result in a premium rate that is excessive or inadequate for the applicable years thereafter and are therefore impermissible. In addition, a discount on premiums simply because a group is a new client would likely result in the premium being inadequate, and in any case, would be unfairly discriminatory in violation of the Insurance Law and regulations promulgated thereunder. Accordingly, new business discounts and similar modifications of premium are not permissible.

Conclusion: With respect to comprehensive health insurance, rate quotations may not include new business discounts or rate guarantees. In addition, pursuant to 11 NYCRR 215 (Regulation 34) issuers should avoid using any misleading or deceptive words, phrases, or statements that are suggestive of new business discounts or rate guarantees in their advertisements, solicitation, and sales materials. Issuers with existing rate guarantee arrangements on comprehensive health insurance may not implement those rate guarantees upon policy renewal (e.g., if a rate agreement commencing January 1, 2019 with a 2019 rate includes a guaranteed rate for the plan year commencing January 1, 2020, the 2020 rate guarantee cannot be honored.). Issuers are advised to bring any existing arrangements into compliance and to review all current rate manuals and underwriting guidelines and submit filings to DFS as appropriate to remove rate guarantees and new business discounts. Such filings should be submitted within 30 days of the issuance of this guidance.