

MA Health insurers sue to raise rates

Say state's veto will cause huge losses; Showdown near on regulatory power

By Robert Weisman, Globe Staff | April 6, 2010

A half-dozen health insurers yesterday filed a lawsuit against the state seeking to reverse last week's decision by the insurance commissioner to block double-digit premium increases — a ruling they say could leave them with hundreds of millions in losses this year.

The proposed rate hikes would have taken effect April 1 for plans covering thousands of small businesses and individuals. Insurers wanted to raise base rates an average of 8 percent to 32 percent; tacked on to that are often additional costs calculated according to factors such as the size and age of the workforce.

Yesterday's legal action sets the stage for a showdown between state regulators and the health insurance industry.

Governor Deval Patrick has made reining in runaway health care costs a centerpiece of his administration and his campaign for reelection — contending they are stifling the capacity of small businesses to create jobs. At the same time, **health insurers argue that government is forcing them to sell policies at a loss that is unsustainable as the costs of medical services climb.**

Filing the suit were Blue Cross and Blue Shield of Massachusetts, the state's largest health insurer, and the five commercial members of the Massachusetts Association of Health Plans: Harvard Pilgrim Health Care, Tufts Health Plan, Fallon Community Health Plan, Health New England, and Neighborhood Health Plan. All are nonprofit carriers.

The insurance carriers will go before a judge on Thursday in Massachusetts Superior Court in Boston asking for a preliminary injunction against Insurance Commissioner Joseph G. Murphy's decision to reject 235 of 274 premium hikes proposed by the insurers.

Those rulings, which marked the first time the state has used its authority to deny health plan increases, were delivered last Thursday. They followed emergency regulations Patrick set requiring that rates be submitted 30 days in advance for review by regulators.

The rulings mean that health insurance rates established in 2009 for small businesses and individuals will remain in effect — rates the insurers say were not even sufficient to cover last year's costs.

“What the commissioner did, we think, is going to create tremendous disruption in the marketplace,” said Dean Richlin, a partner at Boston law firm Foley Hoag who represents insurers.

Health insurance leaders are also contending the health premium rate rejections are a distraction from what they see as the real problem: steadily rising medical costs, particularly from health care providers and hospital groups that use their market clout to negotiate long-term contracts on favorable terms with the insurance carriers.

“We're particularly distressed that this does nothing to contain the underlying hospital costs and doctor costs and drug costs,” said James Roosevelt Jr., the chief executive of Tufts Health Plan.

Barbara Anthony, undersecretary of the state Office of Consumer Affairs and Business Regulation, which oversees insurance regulators, defended Murphy's rulings and said the insurers' lawsuit lacked merit. She said state law gives the commissioner the right to reject rates that are excessive compared to the benefits provided.

“He’s on firm legal ground in disapproving the rates,” Anthony said.

The insurers’ complaint alleges that the state Division of Insurance acted illegally in three ways: by imposing a “rate cap” that is arbitrary and capricious; by attempting to peg rates to a measure — the medical consumer price index — that does not predict future costs; and by violating a requirement to enable insurers to charge adequate rates based on their projected costs in covering medical care.

“As a result of the commissioner’s action,” Richlin said, “the insurance companies will experience substantial and, in some cases, staggering losses. We estimate the collective loss among all of the insurers will run into the hundreds of millions of dollars just for 2010. There are some number that will face near-term solvency problems.”

Three of the largest state health insurers — Blue Cross-Blue Shield of Boston, Tufts Health Plan of Watertown, and Fallon Community Health Plan of Worcester — posted operating losses for 2009.

Anthony said the insurers’ contentions were “specious,” and reflected how out of touch the industry is with the pressures ordinary citizens and businessmen face as Massachusetts emerges from recession.

“This is an outrageous response from an industry that claimed to be concerned about alleviating these escalating health care costs,” Anthony said. “I think it’s clear that the insurance companies are in love with the status quo where they get to continue to charge double-digit premium increases on small businesses and families.”

In their request for an injunction, the health insurers are asking the Superior Court judge to let their proposed rate increases take effect or, barring that, require that the increases be collected from customers and put in escrow until the lawsuit is resolved. That way small businesses and individuals wouldn’t be faced with paying large lump sums later in the year if the judge eventually ruled in favor of the insurers.

While the suit predicts the plaintiffs “will suffer collective losses that threaten to amount to well over \$100 million,” the actual impact will depend on a number of factors such as the strength of their reserves and their ability to negotiate more advantageous contracts with hospitals and physicians groups. Some insurers already have been rebuffed in recent efforts to renegotiate long-term contracts with such health care providers, according to insurance industry leaders.

“Insurance plans have multiyear contracts with providers,” said Lora Pellegrini, the chief executive of the Massachusetts Association of Health Plans, a trade group for insurers. “What incentive is there for providers to renegotiate contracts?”

Catherine Bromberg, a Massachusetts Hospital Association spokeswoman, said she was unaware of discussions between insurers and individual hospitals about reopening contracts.

Insurers are required to maintain financial reserves to cushion them against losses, but such reserves won’t protect them indefinitely if they are not permitted to cover their costs, the carriers said.

Jon B. Hurst, the president of the Retailers Association of Massachusetts, which represents 3,100 retailers and restaurants, said his members are hoping the judge rejects the insurers’ arguments so they can be spared further rate increases they can ill afford. “Just as they’re fighting this in the courts, they’re fighting our efforts to get group discounts for small businesses,” Hurst said.