American Academy *of* Actuaries

Dec. 31, 2012

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-9964-P
P.O. Box 8016
Baltimore, MD 21244-8016

To whom it may concern:

On behalf of the American Academy of Actuaries' Medical Loss Ratio Regulation (MLR) Work Group,[1] I appreciate this opportunity to provide input on the proposed changes to the Medical Loss Ratio Regulation (45 CFR Part 158) that were included in the proposed rule, *Benefit and Payment Parameters for 2014*. This letter focuses only on the MLR components in the proposed rule. Comments from the Academy's Risk Sharing Work Group on the risk-sharing mechanism methodologies also included in the proposed rule are provided in a separate letter.

We support the proposed changes to Section 158.110(b), which changes the deadline for issuers' MLR annual reporting to HHS from June 1 to July 31 starting with the 2014 MLR reporting year, and to Section 158.240(d), which changes the deadline for issuers' rebate payments from Aug. 1 to Sept. 30 starting with the 2014 MLR reporting year. From an actuarial perspective, the integrity of the MLR calculations and associated rebate payments is enhanced materially by adjusting the process timing to facilitate the inclusion of actual premium stabilization payment and receipt amounts (as opposed to preliminary estimates) in issuers' annual MLR reporting to HHS and in the consumer rebates derived from that reporting.

However, we have some technical concerns with the proposed changes to Section 158.130(b), Section 158.140(b), and related sections regarding the precise manner in which the various distinct types of premium stabilization payments and receipts should be incorporated into the MLR metric. Under the proposed rule, all of these types of premium stabilization payments and receipts would be treated in the same fashion—they would be backed out of the MLR denominator (as necessary) and included in the MLR numerator. A more nuanced approach is technically sounder, as follows:

- We concur that benefits received by an issuer under the ACA Section 1341 reinsurance program should be a negative adjustment to the MLR numerator.

[1] The American Academy of Actuaries is a 17,000-member professional association whose mission is to serve the public and the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualifications, practice, and professionalism standards for actuaries in the United States.

- We disagree that the issuer's payment of contributions under the Section 1341 reinsurance program also should be included in the MLR numerator. Instead, these reinsurance contributions should be viewed as an example of regulatory fees falling under the scope of Section 158.161. The effect of designating reinsurance contributions as regulatory fees would be to include the reinsurance contributions as a negative adjustment to the MLR denominator.

  To see why denominator treatment is more appropriate than numerator treatment for the reinsurance contributions, consider the following example: An issuer operating in the large group market has claims after allowable adjustments (e.g., quality improvement expenses) of $850. The same issuer has premiums after allowable adjustments (e.g., premium taxes) of $1,020. Of that amount, $20 represents an explicit provision in the issuer's pricing to recoup reinsurance contributions owed, which also equals $20. If the reinsurance contributions are included in the MLR numerator, then the issuer's MLR is ($850 + $20)/$1,020 = 85.3 percent. However, if the reinsurance contributions are treated as a regulatory fee, then the issuer's MLR is $850/($1,020 - $20) = 85.0 percent. This 85.0 percent is the technically appropriate result since that is what the MLR would have been if the reinsurance program did not exist. In that case, the premiums would have been $1,000 instead of $1,020, so the MLR would have been $850/$1,000 = 85.0 percent.

- We agree that payments made or received by an issuer under the ACA Section 1342 risk corridor program should be included in the MLR numerator.

- We disagree that payments made or received by an issuer under the ACA Section 1343 risk adjustment program should be included in the MLR numerator. Instead, we believe that these risk adjustment payment transfers should be included in the MLR denominator since the payment transfer methodology outlined in the proposed rule derives the payment transfer amounts as adjustments to premiums, not as adjustments to claims.

Consistent with these points, we recommend the following modifications to the proposed changes to 45 CFR Part 158:

- The proposed change to Section 158.130(b) should be modified to indicate that earned premium includes Section 1343 risk adjustment payment transfers and excludes any payments or receipts related to Sections 1341 or 1342;

- In Section 158.140(b)(1), language should be added to indicate that benefits received by the issuer under the Section 1341 reinsurance program should be deducted from incurred claims;

- The proposed change to Section 158.140(b)(4) should be modified to indicate that incurred claims includes Section 1342 risk corridor payments or receipts;

- In Section158.161(a), language should be added to specify that payments made by the issuer under the Section 1341 reinsurance program are deemed to be an example of "Federal or state licensing or regulatory fees;"

- The proposed changes to the example in Section 158.240(c)(2) should be changed to be consistent with the other modifications discussed above. In addition, the example should clarify that for purposes of calculating the rebate owed to an enrollee, any Section 1343 risk adjustment payment transfers included in earned premium should be allocated to that enrollee on a pro rata basis in proportion to the premiums charged to the enrollee. In particular, the risk adjustment payment transfers should not be allocated to enrollees in a manner based on enrollee-specific risk scores. If these payment transfers were allocated to enrollees using enrollee-specific risk scores, then two enrollees who paid identical premiums would receive different rebates, with the higher rebate going to the enrollee having the higher risk score. Such a result, in our judgment, would be contrary to reasonable policy outcomes.

Thank you for your consideration of these comments. If we can be of any further assistance, please contact Heather Jerbi, the Academy's senior federal health policy analyst, at Jerbi@actuary.org or (202) 223-8196.

Sincerely,

Rowen B. Bell, MAAA, FSA
Chairperson, Medical Loss Ratio Regulation Work Group
American Academy of Actuaries

Cc: Carol Jimenez, Director, Division of Medical Loss Ratio, HHS