AMERICAN ACADEMY of ACTUARIES

March 28, 2013

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9968-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

To Whom It May Concern:

On behalf of the American Academy of Actuaries'[1] Medical Loss Ratio Regulation Work Group, I appreciate this opportunity to provide input to the Department of Health and Human Services (HHS) on the proposed rule implementing Section 2713 of the Public Health Service Act (PHSA), regarding certain preventive services.

Our understanding is the proposed rule requires, in certain circumstances, a health insurance issuer to offer a new type of individual health insurance policy covering contraceptive benefits to certain individuals. Since no premium would be required for these new policies, we will refer to them in our comments as zero-premium contraceptive only (ZPCO) policies. Our comments are specific to the effect of the proposed rule on the medical loss ratio (MLR) calculation only—in particular to an unintended consequence of the rule as currently written.

The proposed rule clarifies that ZPCO policies are considered to be "excepted benefits." Since they are excepted benefits, this would mean they would not be subject to the MLR provisions in PHSA Section 2718. As such, when issuers prepare MLR reports under Section 2718, incurred claims from ZPCO policies would not be included as part of the incurred claims they report for the individual market.

The proposed rule also provides that, in situations in which ZPCO policies are issued to individuals whose underlying comprehensive medical coverage is provided via a self-funded group health plan instead of a group health insurance policy, the issuer (or an affiliate) would be eligible to receive adjustments to any federally facilitated exchange (FFE) user fees it might owe.

[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.

HHS previously has stated[2] that FFE user fees are to be subtracted from premiums in the Section 2718 MLR calculation. All else being equal, a lower level of FFE user fees would lead to higher reported premiums for MLR purposes, a lower reported MLR value, and a potentially higher level of customer rebates.

Within this context, consider a hypothetical case of two health insurance issuers that are participating in an FFE and are identical except that Issuer A has issued ZPCO policies to individuals covered under a self-funded group health plan administered by an affiliate and Issuer B has not. Issuer A would incur lower FFE user fees than Issuer B, since Issuer A would receive FFE user fee adjustments in connection with its incurred claims on ZPCO policies. As a result, Issuer A's reported premiums for MLR purposes would be higher than those of Issuer B, and its reported MLR value would be lower than that of Issuer B. As such, it is possible that Issuer A would owe a larger amount in customer rebates than Issuer B, even though the only difference between the issuers would be that Issuer A was required to issue ZPCO policies and Issuer B was not.

We believe that this is an unintended consequence of the proposed rule. There are two ways in which this could be remedied:

1. Allow issuers, in their MLR reporting, to deduct from premiums the gross FFE user fees, prior to any adjustments to which the issuers are entitled under 45 CFR Section 156.50(d).

2. Allow issuers, in their MLR reporting, to include in incurred claims those claims from ZPCO policies that led to FFE user fee adjustments.

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Thank you for this opportunity to provide input. If you have any questions or would like to discuss these comments in more detail, please contact Heather Jerbi, the Academy's assistant director of public policy, at 202.785.7869 or Jerbi@actuary.org.

Sincerely,

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

Cc: Carol Jimenez, Acting Director of Medical Loss Ratio Division, Oversight Group, CCIIO

[2] See Answer #34 of CCIIO Technical Guidance 2012-002 (http://cciio.cms.gov/resources/files/mlr-qna-04202012.pdf)