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March 13, 2019

Centers for Medicare & Medicaid Services (CMS)
Office of Strategic Operations and Regulatory
Affairs Division of Regulations Development
Room C4-26-05
7500 Security Blvd.
Baltimore, MD 21244-1850

Re: Unified Rate Review Template (URRT) and Instructions (CMS-10379)

To Whom It May Concern,

On behalf of the Premium Review Work Group of the American Academy of Actuaries,[1] I would like to provide the following comments on the recently released final Unified Rate Review Template (URRT) and Instructions. Our comments are organized by topic, and we include a section at the end that addresses where further clarification is warranted.

URRT

The URRT no longer includes the *Utilization Description* column and is not referenced in the Instructions for the Actuarial Memorandum either. Without this information, it will be difficult to interpret the utilization and cost trends. For example, it would be unclear whether inpatient utilization is the number of stays or the number of days. At a minimum, we suggest explicitly requiring this information in the Actuarial Memorandum, but including it in the URRT could be more helpful to researchers.

The *Manual EHB Allowed Claims PMPM* are now entered before the adjustments for *Morbidity Adjustment*, *Demographic Shift*, *Plan Design Changes*, and *Other* factors. The appropriate adjustments for the base period experience on which the manual rate is based are likely to differ from those applicable to the experience period data, so entering a manual rate that has only been adjusted to reflect trend to the projection period would generally not produce the right claims cost to enter for the manual rate if the *Morbidity Adjustment*, *Demographic Shift*, *Plan Design Changes*, and *Other* factors are entered consistent with the experience data. This means the issuer would need to either blend the adjustment factors for the trended experience period data and the trended manual data, adjust the manual data beyond trend to be consistent with the trended experience data, or project manual data all the way to the projected index rate level prior to backing the four adjustments for the experience data out of the projected manual rate-based

[1] The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

index rate to determine the value to enter into the template. It would be more straightforward to enter the *Manual EHB Allowed Claims PMPM* after the *Morbidity Adjustment*, *Demographic Shift*, *Plan Design Changes*, and *Other* factors have been applied to the *Trended EHB Allowed Claims* and then blend the two values for the Projected Index Rate. We note that issuers are already required to document adjustments made to the data underlying the development of the manual rate in the memorandum.

The URRT no longer includes inputs for the percentage of premium for benefits other than essential health benefits (EHB), including for benefits that are for state-mandated benefits. We note that the EHB percent of total premium, which is used for purposes of calculating premium tax credits, is included in the 2019 Plans and Benefits Template (PBT) and we assume that this information will still be reported there and can be used for that purpose. However, we note two potential issues that arise out of this change. First, the removal of this information from the URRT can complicate research efforts for those using the URRT public use file. While this information could in theory be obtained from the plans and benefits public use file, this process might not be as straightforward for researchers. Second, states are required to pay for state-mandated benefits, and the percentage for this was also included on the prior version of the URRT and is removed in this update. However, unlike the EHB percentage of premium, this value is not included in the PBT. Comment from the Department of Health and Human Services (HHS) on how plans should communicate this percentage would be helpful.

We suggest splitting out induced utilization from the *AV and Cost Sharing Design of Plan* adjustment in the URRT or, if not there, in the Actuarial Memorandum. In our experience, regulators frequently request this split. Having it in the initial filing would make rate review more efficient.

URRT Instructions: Substantive Issues

Reinsurance: The Instructions note that reinsurance now includes "payments from any reinsurance arrangement or program." Although it is appropriate that this line item include state reinsurance programs under Section 1332 waivers that impact the market-adjusted index rate per terms of that waiver, it might not be appropriate to include commercial reinsurance. Given the shift in treatment of risk adjustment user fees, issuers and regulators could contend that adjustment for reinsurance should be gross of reinsurance premiums, which would exacerbate the impact of inclusion of commercial reinsurance premiums in this field. Ultimately, the inclusion of commercial reinsurance amounts in either gross or net form would cause the calibrated plan adjusted index rate on Worksheet 2 to be inconsistent with the filed calibrated plan adjusted index rate in the Actuarial Memorandum. Because many issuers have commercial reinsurance arrangements, this impact could be widespread and reduce confidence in the validity of those published values. This issue affects:

Page 13, (Experience Period) Allowed Claims
Page 14, Reinsurance
Page 14, Incurred Claims in Experience Period
Page 17, Reinsurance (Adjustment to the Projected Index Rate)
Page 25, Reinsurance (Experience Period)
Page 30, Reinsurance (Projection Period)
Page 39, Reinsurance (Adjustment to the Projected Index Rate)

In regard to the projection period specifically, the Instructions note that reinsurance is not an allowable component of the market-wide adjusted index rate in 45 CFR 156.80(d)(1)(ii), but is included on the URRT for reporting purposes. As before, we note that an explicit exception to this provision is the mechanism by which state reinsurance waivers are reflected in premiums under current Section 1332 waivers. However, the Instructions on page 36 are ambiguous as to when these amounts are reflected in the market-wide adjusted index rate and when they are included merely as a data collection exercise. If HHS elects to include non-1332 waiver reinsurance in the market-wide adjusted index rate, clarification would be helpful as to whether this conflicts with the explicit and intentional removal of language allowing reinsurance as an adjustment to the market-wide adjusted index rate in the HHS Notice of Benefit and Payment Parameters for 2018.

Page 20, Product and Plan Mapping Overview: Further clarification is needed as to why each transitional plan included on the URRT is now required to have its own column. Unless there is a reason for this, we suggest continuing to allow non-single-risk-pool plans or products that were effective during the experience period and are terminated prior to the projection period to be combined for reporting purposes, particularly if the experience included in that column is adjusted out of the projected allowed claims amount prior to determination of the projected index rate. Worksheet 2 can contain a large number of columns and combining columns can make it a little easier to read.

Page 28, Catastrophic Adjustment: The requirement that this factor be 1.0 for non-catastrophic plans has not changed. As we have noted in a prior comment letter,[2] this requirement is inappropriate and results in inadequate rates unless the shortfall is covered by the profit margin or hidden within other adjustments.

Pages 44, Consumer Adjusted Premium Rate Development: We suggest adding an explicit requirement, either in this section or elsewhere, that the quarterly trend factors applied to the issuer's rates should be included in the Actuarial Memorandum.

Terminated Plans and Products: This section, which was included in previous years and required a cross-walk between the terminated plan(s) and the new plan(s), has now been omitted. We believe the crosswalk was useful for regulators.

URRT Instructions: Corrections

Page 31, Rating Areas: The Instructions state, "Select the number of rating areas where single risk pool coverage will be offered, regardless of how much of the rating area is covered. If an issuer were to offer coverage in all of rating areas 1 and 3 and offer coverage in one county of rating area 5, the issuer would select 3 for the number of rating areas." The problem with this is, in the case above, if the issuer selects three rating areas, it lists them as Rating Area 1, Rating Area 2, and Rating Area 3 in the drop-down box in the Excel file. Use of inaccurate rating area labels could cause users to calculate inaccurate premium rates and generate doubt as to the validity of the published unified rate review data. Thus the Instructions should say, "Select the number of rating areas in the State." Then the issuer can choose the three relevant rating areas.

[22] American Academy of Actuaries, Comments on 2017 Unified Rate Review Template Instructions, March 30, 2016.

Page 38, Plan Design Changes: This section states, "These changes are reflected in the 'Other' adjustments column on Worksheet 1, Section II." This sentence was held over from last year but is not accurate for the revised URRT. We suggest deleting it.

Page 40, Taxes and Fees: This is unchanged from last year and still says, "…do not include any contributions to risk adjustment user fees in this amount despite their treatment in MLR calculations, since risk adjustment is expressed in the URRT net of risk adjustment user fees." This appears to us to be an oversight, because the earlier sections imply the opposite. If this is not an error, then clarification is needed regarding inclusion of risk adjustment user fees in risk adjustment amounts.

URRT Instructions: Clarifications

Reinsurance premiums: Reinsurance premiums are not mentioned anywhere in the Instructions. Would reinsurance premiums be netted out of the Reinsurance line or deducted from Experience Period Premium or added to Administrative Expense in Worksheet 2? Even if commercial reinsurance is excluded, this is still an issue for state reinsurance programs that incorporate reinsurance premiums. For those programs, we suggest reinsurance premiums be deducted from reinsurance claims so the net impact of the state reinsurance program could be in the Reinsurance line. As noted above, it is advisable that commercial reinsurance be omitted from this line entirely.

Page 20, Product and Plan Mapping Overview: We suggest clarification of this section. It is unclear whether this represents a substantive change from last year's Instructions or just a simpler explanation. It appears to us that it is not just a simpler explanation but would require all base period experience to be reflected under the plan ID that accrued it and all projected period experience be shown under the plan ID that is expected to accrue it. If the changes are substantive, as would be the case if this interpretation is correct, we suggest explicitly stating the differences. We also note that this simplified treatment of mapping would exclude the experience members whose current plans will be terminated and mapped to new plans from the cumulative rate increases, as their current enrollment and premium are to be reflected in the plan they are currently enrolled in. If the current plan is not renewing, as is likely to be the case for a plan that is mapped, then its experience will not be included in the composite product-level rate increase and would not trigger a Part II justification if the rate change applicable at renewal in the mapped plan is greater than the 15 percent threshold.

Areas Where Clarification of the Instructions Would Be Helpful for Others

These are areas that are clear from a careful reading of the Instructions and comparison to the previous Instructions, but we believe many filing errors could be avoided if changes from last year's Instructions are highlighted, either in the Changes to the Instructions section or elsewhere.

Risk Adjustment (RA) User Fee: RA fees are not mentioned anywhere in the Instructions except on page 40, Taxes and Fees, where the reference is in error, as explained above. Our understanding is that these fees are now to be reflected in the plan-level adjustment for taxes and fees and not in the Risk Adjustment Payment/Charge. Because this is a change from prior years, we think it should be stated explicitly. This issue applies to:

Page 8, Plan Adjusted Index Rate
Page 9, Fees
Page 18, Risk Adjustment Payment/Charge
Page 27, Taxes & Fees

Page 15, Year 1 and Year 2 Trend: This section explains that Years 1 and 2 might not cover a 12-month period for small group filings. We suggest adding similar language for individual and combined market filings because the Experience Period section on page 13 allows a calendar year other than the most recently completed one to be used in an individual filing if an explanation is provided in the Actuarial Memorandum. This comment also applies to Page 36, Trend Factors.

Page 27, *Provider Network Adjustment*: Because the adjustment is applied to the Market Adjusted Index Rate and does not impact expected total allowed claims at a composite level, this factor should only reflect differences between the network characteristics of the plan and the average network characteristics of all plans. Therefore, the weighted average of the network factors for all plans should be 1.0. We note that the weighting used to obtain this 1.0 composite value is specific to where the adjustment is included from a computational perspective. For example, if the issuer makes the adjustment following the adjustment for AV and Cost-Sharing as is reflected in the URRT, the composite should be weighted according to both membership and the allowed claims component of the AV and Cost-Sharing adjustment, rather than membership alone. This should be made clear in the Instructions. Also, if our suggestion to split out induced utilization from the AV and Cost-Sharing Adjustment is accepted, then the plan-level induced utilization adjustments should also have a weighted average of 1.0.

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We appreciate the opportunity to provide comments on the final URRT and Instructions. We would welcome the opportunity to speak with you in more detail and answer any questions you have regarding these comments. If you have any questions or would like to discuss further, please contact David Linn, the Academy's senior health policy analyst, at 202-223-8196 or linn@actuary.org.

Sincerely,

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Chairperson, Premium Review Work Group
American Academy of Actuaries