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March 31, 2015

Centers for Medicare & Medicaid Services
Office of Strategic Operations and Regulatory Affairs
Division of Regulations Development
Attention: CMS-10418
Room C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Annual MLR and Rebate Calculation Report and MLR Rebate Notices

To Whom It May Concern,

On behalf of the American Academy of Actuaries¹ Risk Sharing Work Group, I would like to offer the following comments on the draft 2014 medical loss ratio (MLR) annual reporting form. The MLR reporting form was expanded to include risk corridor calculations, and the MLR calculation was revised to account for the risk adjustment, reinsurance, and risk corridor amounts. This letter includes one general comment on the use of advance cost-sharing reduction (CSR) payments as a deduction to incurred claims, as well as more specific comments on the draft forms and instructions.

Use of Advance CSR Payments as a Deduction to Incurred Claims

The draft MLR and risk corridor reporting form uses advance CSR payments as a deduction to incurred claims for the MLR numerator and the risk corridor allowed costs (Part 3, Line 1.4). We believe that estimated final CSR payments, which include the reconciliation amount, should be used in the MLR and risk corridor calculations rather than advance CSR payments. The MLR and risk corridor calculations are based on earned/incurred experience for the benefit year. The CSRs are directly related to incurred claims and should be included in the calculation on an incurred basis rather than on a cash basis, similar to all other components of claims.

The advance CSR payments can differ significantly from the actual CSR reimbursement determined during the reconciliation because advance payments are based on pricing assumptions and actual experience may be very different than pricing assumptions. If advance payments are higher than reconciled CSR payments, then under the proposed calculation an insurer will have a lower MLR and a lower risk corridor ratio than indicated by actual experience. Such a scenario could result in the insurer paying MLR rebates not indicated by the insurer's actual incurred experience, which cannot be recovered in the future. In addition, the

¹ The American Academy of Actuaries is an 18,500+ 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 qualification, practice, and professionalism standards for actuaries in the United States.

insurer could be required to pay into the risk corridor program when the insurer's actual incurred experience would not lead to a payment. If advance payments are lower than actual CSRs, the insurer will have a higher MLR and higher risk corridor ratio, thus overstating the risk corridor payments due to the insurer or understating risk corridor charges and MLR rebates. This dynamic would advantage insurers that expect to receive additional CSR payments during reconciliation and disadvantage insurers that have been overpaid under the advance CSR payment formula. Allowing insurers to use estimated CSRs would create a more equitable result.

The impact to risk corridor amounts is limited to one year because CSR reconciliation for both 2014 and 2015 occurs in April 2016. Risk corridor reconciliation could be performed in 2016 by either

1. recalculating the 2014 risk corridor after the reconciliation, or
2. adjusting the 2015 benefit year experience to include the reconciliation adjustment within the 2015 benefit year risk corridor calculation.

Option 1, recalculating the 2014 risk corridor, would be more accurate and could be done by replacing the CSR estimate with the reconciled CSR amount in the allowed cost component. Option 2, adjusting within the 2015 risk corridor calculation, could have a leveraged effect because the ratio could move from one band to the other (50 percent share to 80 percent share) and skew the 2015 results. The application of budget neutrality to risk corridor funding also could complicate the situation.

Use of advance CSR payments could have recurring issues for multiple years of MLR due to the three-year averaging. However, the current MLR instructions require incurred claims for prior years to be restated based on further runout. This principle also could apply to the reconciled CSRs, which are a component of the incurred claim calculation and also could be applied to the risk corridor amount if it is recalculated for 2014.

We believe insurers should be able to use the estimated CSR amount booked in 2014 year-end statutory statements or an updated actuarial estimate, perhaps based on data through April 30, 2015, consistent with the date originally specified for reconciliation data. Amounts booked in the statutory statement are reviewed by auditors. An actuarial certification could be required for an updated actuarial estimate. We would be happy to develop a template for an actuarial certification if you wish to implement this recommendation.

In short, using estimated CSRs should result in more accurate and appropriate 2014 risk corridor and MLR results.

MLR Reporting Form and Instructions

Parts 1 and 2, Pages 7-8 of instructions. In the column definitions for the MLR Annual Reporting Form, it is noted that Columns 2A and 7A exclude grandfathered plans. We believe that these columns also should exclude non-grandfathered, non-ACA-compliant plans as noted on Page 1 of the instructions.

Part 2, Pages 27 and 33 of the instructions, Line 1.9, "Reinsurance recovery." The June 30 notification from CMS will not include small group information since reinsurance recovery is only applicable to under-65 ACA segments. Please clarify why there is an entry space for small

group in Column 6 on the reporting form (Page 4 of form).

Part 3, Section 3 on Risk Corridors Calculation, Pages 40-41 of instructions, Line 3.5, “Profit for Risk Corridors calculation.” Line 3.5a excludes the risk programs and CSR portion of the allowable costs. Line 3.5a, earned profit, also should adjust for the cost-sharing reductions, reinsurance payments, and risk adjustment, Lines 1.4, 1.5, and 1.6, respectively. In Line 3.5b, capped profit, the first term should be (3 percent + Line 3.4) where Line 3.4 is the transitional adjustment percentage, rather than (3 percent + Line 3.3).

Line 3.6, “Allowable Administrative Costs.” Line 3.6a should be profit and administrative costs including rather than excluding taxes, since it is compared to Line 3.6b, which includes taxes. Line 2.2 should be added to the formula for Line 3.6a.

Section 5, Page 44 of instructions. Formula references for 5.1a and 5.1b have not been updated on Page 6 of the reporting form itself.

Risk Corridor Reporting Form and Instructions

Tab 1, Table 1, Column A (Individual Total Billable Premium), Page 6-8 of instructions. Please confirm the definition of “Billable premium.” Is this the same as the earned premium that is reported on the MLR form? This column is defined as “the issuer’s total billable member premium for the individual market (as defined in the General Definitions)...” This definition indicates that the total billable premium should reflect all individual policies. Should it only reflect ACA-compliant individual policies? The same clarifications are needed for Tab 2, Table 1 for small group.

Tab 1, Table 4 (Page 9 of instructions) and Tab 2, Table 4 (Page 13 of instructions). Though detailed in the instructions, Table 4 (columns K-N) is not shown in the form provided, for substantially similar plans.

Appendix A (Page 17 of instructions), Tab 3, “Risk Corridors Payment and Charge Calculation,” Line 9. We believe the references to Line 3 are incorrect and should be changed to Line 7.

We appreciate the opportunity to provide comments on the draft MLR reporting form. If you have any questions or would like to discuss these comments further, please contact Heather Jerbi, the Academy’s assistant director of public policy, at 202.785.7869 or jerbi@actuary.org.

Sincerely,

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