AMERICAN ACADEMY *of* ACTUARIES

March 7, 2013

Mr. Douglas Pennington
Director, Rate Review Division, Oversight Group
Center for Consumer Information and Insurance Oversight
7500 Security Boulevard
Baltimore, MD 21244

Dear Doug:

On behalf of the American Academy of Actuaries'[1] Health Practice Council Rate Review Practice Note Work Group, I am submitting the following comments based on our March 6 discussion of the revised unified rate review template and instructions.[2] We recommend several changes be made to the instructions and template for clarity, and those are outlined below.

Description of entries for index rate

On Page 4 of the instructions for "Worksheet 1—Market Experience," under "Index Rate of Experience Period," after the first sentence, we recommend adding clarifying language as follows:[3]

> "The index rate represents the average allowed claims PMPM for essential health benefits. '*It is a carrier-specific rate for the market that is being included in the form—i.e., the carrier's individual market, small group market, or combined market. It should not be adjusted for payments and charges under the risk adjustment and reinsurance programs. It is simply allowed claims PMPM for essential health benefits.'*"

This helps clarify that the index rate is allowed claims, unadjusted for risk adjustment or reinsurance. Clarification is needed due to the language on Page 12 of the "Actuarial Memorandum and Certification" instructions that states, "Note that the index rate must be adjusted for payments and charges under the risk adjustment and reinsurance programs on a market wide basis." Based on this language, it could be assumed that these adjustments are contained within the index rate. As such, the additional clarity on Page 4 of the rate review template instructions would be helpful.

[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.
[2] As contained in Federal Register Doc. 2013-04335 and accompanying relevant instructions and worksheets: http://www.gpo.gov/fdsys/pkg/FR-2013-02-27/pdf/2013-04335.pdf
[3] Recommended language from the work group is indicated in italics.

On Page 4 of the instructions for "Worksheet 1—Market Experience," under "Index Rate of Experience Period," after the second paragraph, we recommend adding the following language as a third paragraph:

> *'The experience period index rate prior to a calendar year 2015 experience period should be adjusted to exclude benefits that are in excess of essential health benefits, but should not be adjusted to include essential health benefits that were not covered during the experience period, such as, in some cases, maternity coverage in the individual market.'*

On Page 13, under "Index Rate for Projection Period," we recommend adding the following introductory paragraph in this section:

> *"As noted in Section I, the index rate represents the average allowed claims PMPM for essential health benefits. This carrier-specific rate for the projection period should not reflect any adjustments for the risk adjustment or reinsurance programs."*

This is proposed to help reinforce that the index rate for a projection period under the Affordable Care Act (ACA) remains a carrier-specific index rate for the market being filed, and does not have a different definition from that in the experience period.

On Page 10 of the "Actuarial Memorandum and Certification" instructions, under "Index Rate," we recommend the following clarifying language:

> "The index rate represents total combined allowed claims experience PMPM of all non-grandfathered plans for essential health benefits within a market or state. '*It is a carrier-specific rate for the market that is being included in the form—i.e., the carrier's individual market, small group market, or combined market. It should not be adjusted for payments and charges under the risk adjustment and reinsurance programs. It is simply allowed claims PMPM for essential health benefits.'* Describe the difference between the total allowed claims…"

On Page 12, we recommend adding language describing the process of going from index rate to plan level rate:

> "Describe how the index rate was adjusted to arrive at each plan level rate. '*Plan level rates are developed from the projected index rate. The first adjustments to be made are to account for expected reinsurance recoveries (in the individual market), risk adjustment payments (receipts from other carriers) or charges (additional payments to other carriers), and exchange user fees. All of these adjustment items will be included across the single risk pool, and thus will be on a carrier's market wide basis and not applied separately by individual plan.*"

There is still some question of whether user exchange fees should be included in the adjustments to the index rate prior to plan level adjustments since it is a fee and not a claims cost. It could be added as part of administrative expenses instead, but then the

instructions would need to include direction on how to get to a market-wide premium. If it was applied as a flat percentage of premium on all plan level products included in the form, however, it would be clear that the user exchange fee is considered a fee and not a claim. This should be looked at carefully in relation to how the user exchange fee is considered in the MLR formula and the risk corridor formula.

We recommend deleting the existing second sentence in the paragraph on Page 12 since it would not be needed if the clarifying sentences above are added. We recommend continuing with the language after the current second sentence (which would be deleted) as a new paragraph. This new paragraph would start as follows:

> *"Further, each plan level rate must be developed by adjusting for only the following additional items…"*

Since this is the only place in which the actual process of plan level rate development is identified, this change would help clarify the process of rate development from the index rate. In summary, for clarification, the process would be as follows:

Index rate

Apply adjustments for
- Risk adjustment
- Reinsurance
- User exchange fees

= Adjusted market wide rate

Apply adjustments by plan for
- Actuarial value and cost sharing design of the plan
- Plan's provider network, delivery system characteristics, and utilization management practices
- Benefits under the plan that are in addition to the essential health benefits
- Administrative costs, excluding user exchange fees
- With respect to catastrophic plans, the expected impact of the specific eligibility categories for those plans.

= Plan level rates

Note: the process laid out above is for clarification only; we are not necessarily recommending that it be included in the instructions.

Description of the entry for projected risk adjustments

On Page 11 of the instructions for "Worksheet 1—Market Experience," under "Projected Risk Adjustments, PMPM," we recommend replacing the paragraph that begins with "If the issuer's projected risk score…" with the following paragraph:

"If the issuer expects to receive a projected risk adjustment charge, then the entry should be a positive value. If the issuer expects to receive a projected risk adjustment payment, then the entry should be a negative value."

Description of the entry for reinsurance recoveries and taxes and fees

On Page 12 of the instructions for "Worksheet 1—Market Experience," we recommend the following adjustments to the existing language:

> **"Projected Incurred Claims, before reinsurance recoveries, PMPM** ~~***net of rein prem, PMPM***~~: The template calculates this value by subtracting the Projected Risk Adjustments, PMPM from the Projected Incurred Claims, before ACA rein & Risk Adj't, PMPM.
>
> **Projected ACA Reinsurance Recoveries,** ***PMPM*** ~~***Net of Premium***~~: Enter projected reinsurance recoveries, referred to as reinsurance payments in the HHS Notice of Benefit and Payment Parameters, from the Federal reinsurance program~~,~~ ~~*less contributions made to the program (referred to as "Premium" in the template)*~~.
>
> Recoveries should be entered as *'zero or'* positive amounts. ~~*For example, in the individual market where recoveries will exceed assessments the amount should be positive. In combined markets, the value may be positive or negative depending upon the portion of the market that is expected to be comprised of individuals and small groups.*~~ In a combined market, the pooled reinsurance adjustment should be based only on the portion of the issuer's individual market business eligible for reinsurance payments. ~~*In the small group market, the value will be negative since there are not any recoveries applicable to the small group market.*~~"

On Page 13 of the instructions for "Worksheet 1—Market Experience," we recommend the following adjustments to the existing language:

> "Enter only the portion of any load that is for taxes and fees that may be subtracted from premiums for purposes of calculating MLR. *'Taxes and fees include assessments under the ACA temporary reinsurance program.'* Any additional load for taxes and fees should be reflected in the Administrative Expense Load. The template uses the percentage to calculate the PMPM Taxes and Fees."

To align the changes in the instructions, we recommend the following changes to "Worksheet 1":

> Cell J36 should be changed to "*Projected Incurred Claims, before reinsurance recoveries, PMPM*."
>
> Cell J37 should be changed to "*Projected ACA reinsurance recoveries, PMPM*."

Description of AV pricing value

On Page 17 of the instructions for "Worksheet 2—Plan Product Information," under "AV Pricing Value," we recommend adding language under the bullet point on the cost sharing design of the plan as follows:

> "The cost-sharing design of the plan. '*This adjustment may include expected differences in utilization of services based on differences in cost sharing. For example, lower cost sharing is generally associated with higher utilization of services, independent of health status. This adjustment must not include any differences in utilization due to differing health status of people with different cost-sharing designs*.'"

The related provision on Page 13 of the "Actuarial Memorandum and Certification" instructions should also be amended:

> **"AV Pricing Values**
> Identify the fixed reference plan selected as the basis for the AV Pricing Values. The reference plan is described further in the instructions for the Part I Unified Rate Review Template. For each plan, indicate the portion of the AV Pricing Value that is attributable to each of the allowable modifiers to the index rate, as described in 45 CFR Part 156, §156.80(d)(2). '*If the adjustment for plan cost-sharing includes any expected differences in utilization due to these differences in cost sharing, describe in detail how the difference was estimated and how the methodology ensures that differences due to health status are not included in the adjustment."*'

Description of metal tier

On "Worksheet 2" of the rate review template, Row 14 is a drop-down box that only includes the ACA metal designations of platinum, gold, silver, bronze, and catastrophic. These metal designations do not apply to products prior to Jan. 1, 2014. As such, we recommend adding an option of *"NA"* or *"prior to ACA"* to the drop-down list to allow users to designate the product metal as non-metal.

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We appreciate the opportunity to provide you with these comments and would be happy to discuss these comments with you further. If you have any questions, 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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Chairperson, Rate Review Practice Note Work Group
American Academy of Actuaries