

**SUPPORTING STATEMENT FOR THE
INFORMATION COLLECTION REQUIREMENTS
CONTAINED IN THE INTERIM FINAL RULE
FOR MEDICAL LOSS RATIO (MLR)
(OFFICE OF MANAGEMENT AND BUDGET
(OMB) Control No. 0938-NEW)**

A. Justification

1. Circumstances Making the Collection of Information Necessary

Section 2718 of the Public Health Service Act (PHS Act) requires health insurance issuers to submit data to the Secretary, beginning for calendar year 2011. The U.S. Department of Health and Human Services expects to receive the first calendar year 2011 data in the spring of 2012. The data will allow for the calculation of the issuer's medical loss ratio (MLR) by state and by market (individual, small group, and large group). The statute sets out minimum MLRs for each market segment. A health insurance issuer who fails to meet the minimum MLR threshold for a plan year must return the difference between its MLR and the minimum MLR in premiums to plan subscribers. The statute would allow for the Secretary to lower the applicable MLR threshold in the individual market on a state-by-state basis if there is a risk of destabilization caused by the requirement to meet a minimum MLR threshold.

The Secretary is issuing an interim final rule (IFR) to implement the provisions of Section 2718. The statute requires the National Association of Insurance Commissioners (NAIC) to develop the methodologies for calculating the MLRs; on October 21, 2010 the NAIC voted to approve model regulations that now serve as the basis for the HHS IFR. HHS was required to wait for the NAIC to complete its work before it could issue regulations; however, health insurance issuers need sufficient notice before the provisions of Section 2718 take effect on January 1, 2011 to make their business plans.

States requesting that HHS lower the minimum MLR threshold will have to submit information that supports their assertion that the individual market in their state would destabilize absent MLR relief. Much of the information requested is currently only available at the state level. HHS must have such information in order to ascertain that destabilization has a high likelihood of occurring. We expect to receive applications soon after promulgation of the IFR.

2. Purpose and Use of Information Collection

The State application will be used by HHS to determine whether an adjustment to the minimum MLR in the individual market in a state is warranted to prevent market destabilization. HHS may also publish some of the state information as well as the Agency's assessment of the sufficiency of the information to determine that a destabilization risk is

likely.

3. Use of Improved Information Technology and Burden Reduction

All information collected in the application may be submitted electronically. HHS staff will analyze the data electronically and communicate with applicants using email and phone.

4. Efforts to Identify Duplication and Use of Similar Information

Since this is a minimum MLR threshold that was created by the Affordable Care Act (ACA), the information that will be collected has never been collected before by the Federal government.

5. Impact on Small Businesses or Other Small Entities

Not applicable.

6. Consequences of Collecting the Information Less Frequent Collection

The application process is voluntary. We expect over time that fewer States will apply for waivers as health insurance issuers become accustomed to the new MLR requirements. We have set up a system where States apply annually; we do not believe that less frequent applications would serve the goals of the statute.

7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5

No special circumstance.

8. Comments in Response to the Federal Register Notice/Outside Consultation

Due to the emergency nature of the program announcement OMB has waived the Federal Register notice requirements for this collection.

9. Explanation of any Payment/Gift to Respondents

Not applicable.

10. Assurance of Confidentiality Provided to Respondents

No personal health information will be collected. All information will be kept private to the extent allowed by applicable laws/regulations.

11. Justification for Sensitive Questions

No sensitive information will be collected.

12. Estimates of Annualized Burden Hours (Total Hours & Wages)

Adjustment Application

In order to complete the adjustment application, each applicant will be asked to provide the following information:

- The applicable State minimum required MLR, if any (§158.321(a))
- State individual market withdrawal requirements, if any (§158.321(b))
- Any mechanisms to provide options to consumers in case of insurer withdrawal (§158.321(c))
- Information on issuers in the State’s individual market (§158.321(d)(1)-(2))
- A State must provide its own proposal as to the adjustment it seeks to the minimum MLR (§158.322)
- The contact information for the State representative (§158.323)

In addition, a State whose request for adjustment to the MLR standard has been denied by the Secretary may request reconsideration of that determination. A request for reconsideration must be submitted in writing to the Secretary within 10 days of her decision to deny the State’s request for an adjustment, and may include any additional information in support of its request.

We estimate that it will take approximately ten working days for a State to complete the application. The time burden estimate is uncertain because some states may have better access to the required application information elements, while other states may have to seek some of the required information from health insurance issuers in their states, which could increase their burden. The estimate below is our best guess at the average state burden, and is based on interviews with two former State Insurance Commissioners, a former health issuer employee, and a former State Insurance Department actuary. It is estimated that approximately 20 states will submit applications. This estimate is based on preliminary data analysis and indications by a few states that they may apply for an adjustment.

Estimated Annualized Burden Table for State Individual Market Application

Forms (If necessary)	Type of Respondent	Number of Respondents	Number of Responses per	Average Burden hours	Total Burden Hours
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			Respondent	per Response	
MLR Adjustment Application (no specific form)	State	20	1	94	1,880
Total		20	1	94	1,880

Cost Estimate for All Respondents Completing the MLR Adjustment Application

Type of respondent	Number of Respondents	Number of Responses per Respondent	Average Burden Hours	Wage per Hour (including fringe)	Burden Costs Per Response
Commissioner	20	1	4	\$450	\$1,800
Senior General Counsel	20	1	5	\$350	\$1,750
Junior General Counsel	20	1	10	\$175	\$1,750
Other Professional Staff Development of Application	20	1	75	\$125	\$9,375
Total	20	1	94		\$14,675

This estimate includes all of the hours it would take a State to complete an application, including gathering data, developing data analyses, synthesizing information, and developing the adjusted MLR threshold. The estimates were developed by interviewing a former insurance commissioner, a former insurance department actuary, and a former health plan employee familiar with the burden of submitting financial data to health insurance departments.

Retention of Records

Subpart E of the interim final rule establishes the Secretary’s enforcement authority regarding the reporting requirements under section 2718. Issuers must maintain all documents and other evidence necessary to enable HHS to verify that the data required to be submitted comply with the definitions and criteria set forth in the rule and that the MLR is calculated and any rebates owing are calculated and provided in accordance with the rule. In addition, the IFR requires issuers to maintain all of the documents and other evidence for the current year and six prior years, unless a longer period is required under §158.501.

The Department expects all health insurance issuers to retain data relating to the calculation of MLRs; and some issuers will have to retain information regarding the payment of rebates and the notice to enrollees. The Department assumes that the burden associated with our record retention requirements do not exceed standard record retention practices in that issuers are already required to retain the records and information required by this IFR in order to comply with the legal requirements of their States' departments of insurance. For that reason, we are assigning a minimal burden to these requirements. We estimate that 442 issuers must comply with record retention requirements. We further estimate that it will take each issuer a total of 1 hour to file and maintain both the data for MLR calculations and the information regarding payment of rebates and notices to enrollees. The total estimated annual burden associated with the requirements in §158.501 through §158.502 is 442 hours at a cost of \$10,045.

Estimated Annualized Burden Table for Retention of Records

Forms (If necessary)	Type of Respondent	Number of Affected Parties	Number of Responses per Respondent	Average Burden hours per Response	Total Burden Hours
Records retention (no specific form)	Health insurance issuer	442	1	1	442
Total		442	1	1	442

Type of respondent	Number of Respondents	Number of Responses per Respondent	Average Burden Hours	Wage per Hour (including fringe)	Burden Costs Per Response
Professional Staff	442	1	1	\$22.75	\$22.75
Total	442	1	1	\$22.75	\$10,045

13. Estimates of other Total Annual Cost Burden to Respondents or Record Keepers /Capital Costs

The application process does not explicitly require the State to retain supporting documentation; however, we expect that the State would do so. We estimate that the retention of these documents would fall under normal state record retention practices and therefore would have a marginal annual cost to the applicant.

The record retention costs for maintaining records regarding MLR data and calculations are estimated in #12 above.

14. Annualized Cost to Federal Government

This is the cost to government to review the state adjustment requests.

Type	Total Burden	Total	Hourly	Total Federal
Federal employee support	Hours per reviewer	reviewers	Wage Rate¹	Government Costs
State Adjustment Application Reviewer	200 hrs (~ 20 applications total at 10 hours labor per review)	3	\$72	\$43,200
Total				\$43,200

There is no estimated government cost of requiring issuers to retain records.

15. Explanation for Program Changes or Adjustments

Section 2718 of the ACA creates for the first time a Federal requirement that health insurance issuers meet minimum MLR thresholds.

16. Plans for Tabulation and Publication and Project Time Schedule

HHS will publish summary state MLR adjustment application information, as well as our disposition of the case.

17. Reason(s) Display of OMB Expiration Date is Inappropriate

Not applicable.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to the certification.

B. Collection of Information Employing Statistical Methods

Not applicable. The information collection does not employ statistical methods.

¹ Salaries are based on a 14 Grade/Step 1 in Washington DC area with the allowance up to \$150,000 to include fringe.