

**Supporting Statement -
Quarterly Reporting for Mini-med Plans and Expatriate Plans (CMS-10373)**

A. Justification

1. Circumstances Making the Collection of Information Necessary

Section 2718 of the Public Health Services Act (PHS Act) requires a health insurance issuer (issuer) offering group or individual health insurance coverage to submit a report to the Secretary of HHS concerning the amount the issuer spends each year on claims, quality improvement expenses, non-claims costs, Federal and State taxes and licensing or regulatory fees, and the amount of earned premium. An issuer must provide an annual rebate to enrollees if the amount it spends on certain costs compared to its premium revenue (excluding Federal and States taxes and licensing or regulatory fees) does not meet a certain ratio, referred to as the medical loss ratio (MLR). An interim final rule (IFR) implementing the MLR was published on December 1, 2010 (75 FR 74865, OCHIO-9998-IFC) as modified by technical corrections on December 30, 2010 (75 FR 82277), which added Part 158 to Title 45 of the Code of Federal Regulations. The IFR is effective January 1, 2011.

Section 158.110(b)(1) of the IFR requires an issuer to submit a report for each MLR reporting year “on a form and in the manner prescribed by the Secretary” for each large group market, small group market, and individual market within each state in which the issuer conducts business. In order to respond to concerns that policies that have a total annual limit of \$250,000 or less (sometimes referred to as “mini-med plans”) and policies that primarily cover employees working outside the United States (referred to as “expatriate plans”) have high administrative costs, §158.221(b)(3) and (4) of the IFR provide a multiplier for the costs that comprise the numerator of the MLR for such policies, for the year 2011. Section 158.120(d)(3) and (4) of the IFR also require that, for the year 2011, the experience from such policies be separately reported from other policies and that reports regarding such experience be submitted on a quarterly basis. Specifically, the IFR provides that an issuer with mini-med policies or expatriate policies will have to submit a quarterly report to the Secretary by:

- May 1, 2011, for the quarter ending March 31, 2011;
- August 1, 2011, for the quarter ending June 30, 2011; and
- November 1, 2011, for the quarter ending September 30, 2011.

CMS has published guidance on its website stating that the filing deadline for the first quarterly report has been extended. CMS will issue additional guidance with an exact due date for the submission of first quarter reports once the quarterly reporting form is finalized and approved.

The form and content for the quarterly reports required by 45 CFR Part 158 must be specified so that issuers can comply with their statutory and regulatory obligations to provide such reports to the Secretary. The quarterly reports and the data specified in them are needed by

CMS in order to evaluate whether and what type of special circumstance adjustment is warranted for mini-med and expatriate plans for MLR reporting year 2012 and beyond. The quarterly reports must be submitted electronically by issuers in an Excel spreadsheet format to MLR@hhs.gov.

CMS notes that although 45 CFR §158.110 also requires an annual MLR report, the annual report will be the subject of a separate Federal Register filing. The first annual report required under section 2718 of the PHS Act and 45 CFR §158.110 is not due until June 1, 2012. To that extent, we will submit a separate package containing the annual reporting forms to OMB for approval.

2. Purpose and Use of Information Collection

The data collection of quarterly reports by issuers providing coverage through expatriate plans and mini-med plans will allow CMS to better ascertain whether a special circumstance adjustment is warranted for expatriate plans and mini-med plans for the 2012 MLR reporting year and beyond.

3. Use of Improved Information Technology and Burden Reduction

The quarterly reports will be submitted electronically to the Secretary by issuers for each respective State and market in which it conducts business.

4. Efforts to Identify Duplication and Use of Similar Information

The proposed quarterly collection of data has never been collected before by the Federal government.

5. Impact on Small Businesses or Other Small Entities

As stated in the Regulatory Impact Analysis of OCIIO-9998-IFC (75 FR 74864 (December 1, 2010)), CMS does not believe that the required submission of quarterly reports to the Secretary will have a significant impact on a substantial number of small entities. CMS estimates that of the 75 issuers who must report quarterly to the Secretary in compliance with OCIIO-9998-IFC, there are only approximately five (or 4.75) small entities, or roughly six percent, who must comply with the reporting mandate.

6. Consequences of Collecting the Information Less Frequent Collection

OCIIO-9998-IFC requires an issuer to submit quarterly data to the Secretary in order to obtain data that will allow the Secretary to assess whether the special circumstance adjustment should be modified prior to the start of the 2012 MLR reporting year. The annual data for mini-med and expatriate plans will not be available to support this determination until the middle of the 2012 MLR reporting year. Therefore, CMS would be in violation of

45 CFR §158.110(b)(2) (75 FR 74864, 74922) if CMS were to collect the referenced data less frequently than on a quarterly basis.

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

The emergency 30-day Federal Register notice published on March 25, 2011. In response to our request for comment, CMS received four public comments, all from health insurance issuers (issuers).

We received several comments requesting that CMS extend the deadline for reporting first quarter data to the Secretary given that the proposed quarterly reporting form would not likely be approved by the original submission deadline of May 1, 2011. In response to commenters, CMS recently published guidance on its webpage indicating that that filing deadline for first quarter data has been extended. CMS will issue new guidance with an exact filing date once the quarterly reporting form is finalized.

Several commenters suggest that CMS allow for the electronic filing of quarterly reports as stated in the supporting statement to the emergency PRA package and that CMS provide an electronic form in an Excel format and internet website for the filing of quarterly reports. One commenter also suggested that CMS amend the form to include contact information to respond to questions CMS may have regarding the reported data. CMS recently published guidance on its webpage stating that the quarterly reports must be submitted to CMS in an Excel spreadsheet format to a specially designated email address (MLR@hhs.gov). Based on one commenter's suggestion, we have also revised the form to include the issuer's contact information.

We received a comment from an issuer requesting that CMS exempt the information provided on the quarterly reporting form from public disclosure under the Freedom of Information Act (FOIA). The commenter also suggested that CMS provide issuers with copies of all FOIA requests pertaining to an issuer's quarterly report as well as provide the issuer with at least five (5) business days to advise CMS as to any specific information it deems to be exempt from FOIA disclosure. In response, section 2718 of the Public Health Service Act (PHS Act), as added by the Patient Protection and Affordable Care Act (Affordable Care Act) requires that the reports submitted by issuers be public.

Several commenters suggested that the medical loss ratio (MLR) interim final rule (IFR) is not clear as to whether issuers need to report the experience of mini-med plans and expatriate plans by State and by business segment (i.e., individual, small group and large group) or in the aggregate and request that the experience of expatriate plans and mini-med plans be aggregated and reported on a national basis. CMS has considered commenters' suggestions and the arguments made on behalf of national aggregation and agree that issuers can nationally aggregate by market the experience of expatriate plans. However, we do not agree

that mini-med plan experience requires the same treatment and decline to permit national aggregation of mini-med plan experience. CMS is issuing guidance clarifying the aggregation of expatriate plan experience as well as the aggregation of mini-med plan experience. Based on the comments received and our response to them, we are amending the proposed quarterly form to include two separate, but almost identical, forms – one for issuers of mini-med plans and one for issuers of expatriate plans.

We received a few comments from issuers suggesting various technical changes to the proposed quarterly reporting form so that the quarterly reports can capture data that is consistent with the Supplemental Health Care Exhibit filed with the National Association of Insurance Commissioners (NAIC) on or about April 1, 2011. In response to these comments, we have revised the proposed quarterly reporting form and incorporated all of the suggested revisions.

A few comments from issuers suggest that CMS clarify whether reporting of quarterly data is required for all health issuers issuing mini-med and expatriate coverage, or whether an issuer must submit the quarterly data only if it wishes to apply the special circumstance adjustment to its mini-med and expatriate plan experience. In response, 45 CFR §158.120(d)(3) and (4) mandate aggregating and reporting of mini-med and expatriate plans' experience separately from other types of policies, and require quarterly reporting for the first three quarters of 2011. However, in the interest of providing clarity, we plan to issue guidance explaining this.

Lastly, one commenter requested that CMS issue guidance on the treatment of expatriate plans and mini-med plans for MLR reporting year 2012 by August 1, 2011. The commenter also suggested that CMS permanently extend the MLR calculation provided for in the IFR for expatriate plans, and apply the MLR calculation to mini-med plans through 2014. CMS will take into account the commenter's suggestion as it considers the treatment of expatriate plans and mini-med plans beyond 2011.

9. Explanation of any Payment/Gift to Respondents

Respondents will not receive any payments or gifts as a condition of complying with this information collection request.

10. Assurance of Confidentiality Provided to Respondents

CMS does not intend to publish the quarterly report on its website or otherwise. However, no individually identifiable personal health information will be collected and cannot, consequently, be disclosed.

11. Justification for Sensitive Questions

Section 2718(a) of the PHS Act requires issuers to report data on premium revenue, reimbursement for clinical services, quality improvement activities, non-claims costs, and Federal and State taxes and licensing and regulatory fees, for the purposes covered by this

collection. It also requires information on the nature of the non-claims costs and provides for certain adjustments to both premium revenue and claims expenses that are also covered by this collection. Title 45 CFR §158.110 requires that in 2011 these reports be filed quarterly by mini-med plans and expatriate plans. These requirements promote greater public transparency and accountability for the use of premium dollars.

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

An issuer of mini-med plans and/or expatriate plans that applies a “special circumstances” adjustment to its 2011 MLR experience, in accordance with §158.221(b)(3) and (4) of the IFR, must separately aggregate its MLR data from other policies and submit three quarterly reports to the Secretary in 2011.

We estimate that 50 issuers offer mini-med coverage in five States. Based on comments received during the emergency 30-day comment period, we are allowing issuers of expatriate plans to aggregate their experience nationally, by market. We also estimate that each of the 25 issuers projected to offer expatriate coverage will file one national report combining the data from the small group market in all States and separately combine the data from the large group market in all States in which the issuer offers group expatriate plans. (The quarterly report requirement does not apply to individual expatriate plans.) We further estimate that each quarterly filing will require approximately eight person-days of effort. (Note that this is the incremental effort required to prepare a quarterly filing. As described in the regulatory impact analysis, the one-time or start-up costs incurred by an issuer will be associated with the development of policy, procedures, and systems required to prepare the annual report for the Secretary. Those one-time costs are outside the scope of this clearance, which only addresses the quarterly submissions during 2011.)

As described in the regulatory impact analysis, the preparation and submission of reports is expected to require a mix of skills. We estimate that: 45 percent of the person-hours will involve accounting and less senior actuarial staff; 45 percent of the hours will involve information systems staff; 5 percent of the hours will involve financial manager and more senior actuarial staff; and 5 percent of the hours will involve legal staff. The average hourly compensation, including fringe benefits and overhead expenses, is \$52.46.

Thus, we estimate that a typical issuer, on average, will require just over 60 staff hours at an average expense of approximately \$3,274 ($\52.46×62.4 hours) to prepare a quarterly filing. Over the course of the year, each issuer of mini-med coverage will prepare 15 filings (5 filings per issuer in each of the first three quarters of 2011). Similarly, over the course of a year, each issuer of expatriate coverage will prepare three filings, or one filing in each of the first three quarters in 2011.

The total burden associated with this quarterly filing requirement for all 75 issuers is estimated to be 51,480 hours (46,800 hours for 50 issuers of mini-med coverage + 4,680 hours for 25 issuers of expatriate coverage) with a total cost to issuers of approximately \$2.7 million. The burden for the average mini-med issuer is expected to be approximately 940

hours (62.4 hours x 5 filings x 3 quarters = 936 hours/per issuer), with an average annual cost of \$49,110 (15 filings x \$3,274). The burden for the average issuer of expatriate coverage is expected to be approximately 187 hours (62.4 hours x 1 filing x 3 quarters = 187.20 hours/per issuer), with an average cost of \$9,822 (3 filings x \$3,274).

12A. Estimated Annualized Burden Hours

| Forms (if necessary) | Type of Respondent | Number of Respondents | Average Number of Responses per Respondent | Frequency | Estimated Burden Hours per Response | Total Estimated Burden Hours |
|-----------------------|--------------------|-----------------------|--|-----------|-------------------------------------|------------------------------|
| Quarterly Reporting | Mini-med Issuer | 50 | 5 | 3 | 62.4 | 46,800 |
| Quarterly Reporting | Expatriate Issuer | 25 | 1 | 3 | 62.4 | 4,680 |
| Total | | | | | | 51,480 |

12B. Cost Estimate for All Respondents Completing the Quarterly Report (Annualized)

| Type of respondent | Number of Respondents | Average Number of Responses per Respondent | Frequency | Estimated Burden Hours per Response | Wage per Hour (including fringe*) | Burden Cost per Annualized Response |
|--------------------|-----------------------|--|-----------|-------------------------------------|-----------------------------------|-------------------------------------|
| Mini-med issuer | 50 | 5 | 3 | 62.4 | \$52.46 | \$3,274 |
| Expatriate issuer | 25 | 1 | 3 | 62.4 | \$52.46 | \$3,274 |
| Total | | | | 62.4 | \$52.46 | \$3,274 |

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

The data that is used to compile an issuer’s quarterly filing is a subcomponent of the data used to compile the annual report. The IFR requires issuers to maintain records that support the data reported on the annual filing. However, this reporting requirement is solely concerned with the quarterly reporting required of plans offering mini-med and expatriate coverage in advance of the annual reporting that all issuers are required to prepare. Although there is no incremental record keeping costs associated with the quarterly filing, the annual record keeping cost per issuer is approximately \$17 to \$29.

14. Annualized Cost to Federal Government

| Type | Total Burden | Total | Hourly | Total Federal |
|------|--------------|-------|--------|---------------|
|------|--------------|-------|--------|---------------|

| Federal employee support | Hours per reviewer | reviewers | Wage Rate (GS 14 equivalent) – (includes fringe) | Government Costs |
|---------------------------------|--|------------------|---|-------------------------|
| Data Analysis | 1 hr per data submission for each Quarterly filing (75 filers 3 times per yr – 225 hrs) ¹ | 1 | \$72 | \$16,200 |
| Total | | | | \$16,200 |

Salaries are based on a 14 Grade/Step 1 in the Washington DC area with a benefit allowance for a total annual salary of \$150,000.

15. Explanation for Program Changes or Adjustments

This is a revision to a previously approved information collection. We received comments from health insurance issuers suggesting that we modify the proposed quarterly reporting form to include issuer contact information, technical changes that will allow CMS to use the form to collect the same information in the same format and specifications that is reported to the National Association of Insurance Commissioners (NAIC), and to allow national aggregation for mini-med plans and expatriate plans. We have revised the quarterly reporting form and have included all proposed suggestions, except we decline the suggestion for national aggregation of mini-med plans' experience. As a result, we also have separated the form to create two almost identical forms (identical except for national aggregation for expatriate plans and State by State and market aggregation for mini-med plans) and placed the instructions in a separate document rather than at the bottom of the reporting forms. There is one set of instructions for both the mini-med reporting form and the expatriate reporting form. We split the forms and put the instructions on a separate page from the forms so that issuers, consumers, and other interested parties would have an easier time compiling and viewing the requested information.

16. Plans for Tabulation and Publication and Project Time Schedule

The deadline for reporting data from the first quarter, ending March 31, 2011, from issuers of mini-med plans and expatriate plans has been extended to an unspecified date. We will issue guidance with an exact due date for first quarter data once the quarterly form is approved for use, although CMS anticipates that it will be mid-June. The second quarterly report is due by August 1, 2011 for the quarter ending June 30, 2011. And the remaining quarterly report is due to the Secretary by November 1, 2011 for the quarter ending September 30, 2011.

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

¹ A data submission includes filings for all states by a single issuer.

In accordance with 45 CFR §158.120(d)(3) and(4), issuers will only submit the quarterly reporting forms to the Secretary for the 2011 MLR reporting year. Therefore, a three-year OMB expiration date for the quarterly reporting forms does not apply.

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 is transactional in nature and does not employ statistical methods or model development utilized by States.