

Justification for Emergency PRA Clearance Medical Loss Ratio – Quarterly Reports and Data Collection

Subject: Request for Emergency Clearance of the Paperwork Reduction Act Package to Collect Quarterly Data from Health Insurance Issuers that Offer Comprehensive Medical Coverage through Mini-med Plans and Expatriate Plans

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 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) and 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.

The IFR requires issuers to submit annual MLR reporting data for each large group market, small group market, and individual market within each State in which the issuer conducts business. For the 2011 MLR reporting year, the IFR allows 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”) to use a multiplier for the costs that comprise the numerator of the MLR. The application of this special circumstance adjustment is in response to concerns that such policies, because of their unique nature, have disproportionately high administrative costs. However, in order to evaluate such concerns, the IFR requires that the experience from such policies be submitted separately from other policies and that reports regarding such experience be submitted quarterly in 2011. The multiplier and quarterly reporting for mini-med and expatriate policies apply to the 2011 MLR reporting year. The quarterly data HHS receives will help HHS better ascertain whether and what type of special circumstance adjustment is warranted for these types of plans for MLR reporting year 2012 and beyond.

CCIIO requests emergency action for this clearance by the Office of Management and Budget. We request emergency processing procedures for this application because issuers providing mini-med and expatriate plans need to know the level of detail and specific data elements that must be submitted to the Secretary in 2011. The first quarterly submission of data is due to the Secretary by May 1, 2011, which will include data for the calendar quarter ending March 31, 2011. To evaluate the appropriateness of the special

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circumstances adjustment prior to the start of the 2012 MLR reporting year, information on the administrative expense associated with these types of health insurance coverage, expressed as a percentage of premium, must be collected and analyzed on a quarterly basis as it is submitted throughout 2011.

The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information. The IFR requires that issuers file their first quarterly report based upon quarterly data as of March 31, 2011. Issuers will require at least 4 to 6 weeks to prepare the first quarterly reporting, and need the definitions of the data to be reported, in order to prepare the first quarterly report. Normal clearance procedures would not provide issuers a sufficient amount of time to create, implement, and test the systems needed to capture quarterly data by March 31, 2011 (the end of the first reporting quarter). The proposed data collection is needed by CCIIO to support policy making during the summer of 2011.

If the normal clearance procedures are required, issuers would not be able to report their first quarterly data, and also would not know the definitions of the data to be reported in time to create, implement and test the systems needed to capture the second quarterly data, both in violation of 45 CFR §158.110. Mini-med and expatriate issuers have indicated that if relief from meeting the MLR standard is not given beyond 2011, they will likely exit the market or, in the case of expatriate plans, take their business off-shore. If they do so, HHS anticipates that several million Americans¹ may lose their health care mini-med coverage. For expatriate business that may be transferred off-shore, those enrollees would lose all State and Affordable Care Act protections. HHS needs the quarterly data from the first and second quarters, by the regulatory deadlines, in order to analyze the data and publish a final MLR rule this fall, so that it has a basis to address the needs of those covered by mini-med plans and expatriate plans beyond 2011. If HHS is unable to do so, the millions of Americans covered by mini-med plans may simply lose their coverage and those covered by expatriate plans may either lose their coverage or lose all protections provided by State and Federal law.

Due to the imminent deadline of the initial submission of quarterly data to the Secretary (May 1, 2011), CCIIO is requesting an Emergency Review for this collection and OMB approval of the quarterly reporting package by February 11, 2011. The IFR requires an issuer to submit quarterly data to the Secretary and HHS would be in violation of 45 CFR §158.110(b)(2) (75 FR 74864, 74922) if HHS were to collect the referenced data less

¹ This estimate is based on data obtained through issuer's filing requests for a waiver from the annual limits provisions of the Affordable Care Act. As of February 15, 2011, mini-med issuers (as defined by the MLR IFR) have filed such requests for group mini-med policies that cover approximately 2.35 million enrollees. Further, this number does not include individual policies, of which we believe there is a very significant number although HHS does not have data on the number of enrollees in individual mini-med plans.

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frequently than on a quarterly basis. CCIIO will simultaneously submit for approval a separate package to obtain the full three-year approval for the collection of quarterly data. In addition, CCIIO will be submitting a separate, subsequent PRA package, with provision for the usual comment period, to obtain full approval for the collection of annual data, in which the first submission is due by June 1, 2012, from all issuers that are subject to the MLR provisions under section 2718 of the PHS Act and the IFR.

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