

CMS' Responses to Public Comments Received for CMS-10373

The Centers for Medicare and Medicaid (CMS) received four comments, all from health insurance issuers, related to CMS-10373, which is entitled "Medical Loss Ratio Quarterly Reporting." The information presented below is a synopsis of the comments received and CMS' responses to them.

(1) Comment:

Several commenters recommend that the deadline for submission of first quarter MLR data to the Secretary be extended from May 1, 2011 to July 1, 2011 or August 1, 2011 or that CMS conform the due dates for the MLR quarterly reports to the dates required for quarterly reporting by the States and the National Association of Insurance Commissioners (NAIC).

Response:

CMS understands that issuers need to have an adequate amount of time to prepare the first quarterly report and CMS recently published guidance indicating that the filing deadline for the first quarterly report has been extended. Although our goal is that the deadline for first quarter reports will be in mid-June 2011, as stated in the published guidance, 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.

(2) Comment:

Several commenters suggest that CMS allow for the electronic filing of quarterly reports as stated in the "Supporting Statement for (the) Emergency PRA" and that CMS provide an electronic form in an Excel format and internet website for the submission of quarterly data. One commenter suggests that the form be amended to include contact information for the issuer in case CMS has questions about the data submitted.

Response:

CMS recently published guidance on its website stating that the quarterly reports must be submitted in an Excel spreadsheet to the following email address: MLR@hhs.gov. The form has also been revised to include contact information for the issuer. Once the quarterly reporting form has been approved for use, CMS intends to post the quarterly reporting form on its website in Excel format for issuers to use in preparing and submitting the quarterly report.

(3) Comment:

One commenter proposes that the information on the quarterly reporting form be exempt from disclosure under the Freedom of Information Act (FOIA) based on its assertion that many of the items reported on the proposed form (such as premium earnings, direct premiums written, salary and benefit expenses, and underwriting gains and losses) are highly sensitive commercial and financial information that issuers treat as proprietary and confidential. The issuer also

recommends 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 business days to advise CMS of any specific information it deems to be exempt from FOIA disclosure.

Response:

CMS appreciates the commenter's concern about the disclosure of company information. However, 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 information.

(4) Comment:

Several commenters assert 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.

Response:

CMS has considered the commenters' suggestions and the arguments made on behalf of national aggregation. We agree that based on the unique situs issues of expatriate plans it is logical to aggregate their experience nationally by market. However, we do not think that mini-med plans have unique issues that require the same treatment, and thus we decline to permit national aggregation of mini-med plan experience. Because issuers in the large group market must meet an 85% MLR standard and issuers in the small group market must meet an 80% standard, large group expatriate plans must be aggregated separately from small group expatriate plans (the quarterly reporting requirement does not apply to individual expatriate plans). This interpretation is consistent with the language in the MLR IFR. CMS is issuing guidance clarifying the aggregation of expatriate plan experience as well as the aggregation of mini-med experience. Based on these comments 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. Also, for issuers' convenience, we have placed the instructions to the forms on a separate page rather than at the bottom of each page of the forms.

(5) Comment:

Two commenters suggest that several technical aspects of the data required by the proposed quarterly reporting form are inconsistent with and be amended to be congruent with the Supplemental Health Care Exhibit (SHCE) that issuers filed with the National Association of Insurance Commissioners (NAIC) on or about April 1, 2011. Two commenters proposed numerous technical changes to the form in this regard.

Response:

We have considered all of the suggested revisions and have modified the proposed quarterly forms to align with the SHCE that issuers submit to the NAIC.

(6) Comment:

Several commenters suggest that CMS clarify whether the reporting of quarterly data is mandatory for all health issuers issuing mini-med plans and expatriate plans or whether an issuer must submit the quarterly reports only if it wishes to apply the special circumstance adjustment to its mini-med and expatriate plan experience.

Response:

45 CFR §158.120(d)(3) and (4) mandate aggregation and reporting of mini-med plans and of expatriate plans' experience separately from other types of policies, and require quarterly reporting for the first three quarters of 2011. Section 158.221(b)(3) and (4) require issuers to apply the special adjustment to the numerator of the medical loss ratio for the 2011 MLR reporting year and doing so is not optional. CMS is issuing guidance clarifying that issuers of mini-med policies and expatriate policies must file quarterly reports in 2011.

(7) Comment:

One commenter suggests that CMS issue guidance by August 1, 2011 on the treatment of expatriate plans and mini-med plans for MLR reporting year 2012. The commenter also suggests that CMS extend the MLR calculation provided in the IFR permanently for expatriate plans and apply the MLR calculation to limited benefit plans (mini-med plans) through 2014.

Response:

CMS will take into account the commenter's suggestion as it considers the treatment of expatriate plans and mini-med plans beyond 2011.

(8) Comment:

One commenter notes that it has spent more than \$100,000 in staff hours in preparation for the first quarterly report and that this amount exceeds the amount CMS estimated that an issuer would spend in compiling quarterly reports for the Secretary.

Response:

CMS appreciates all of the effort put forth by commenter in its attempt to compile data for the first quarterly report. As stated in our initial supporting statement, the CMS estimate reflects the incremental effort required for an issuer 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 for preparation of the annual report for the Secretary. Those one-time costs are outside the scope of this estimate, which only addresses the quarterly submissions during 2011.