Attachment E

CMS Response to Public Comments

CMS-10476

Medical Loss Ratio (MLR) Report for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP)

A 60-day Federal Register notice was published on July 5, 2013, Vol. 78, No. 129, pg 40482-40484.

Comment

Reporting Instructions. There are several instances in the draft Medicare MLR Report CY 2014 Reporting Year Filing Instructions where CMS notes that the fields or categories are "consistent with the commercial MLR form" (i.e., Worksheet 1, Section 2 – Data Collection, Lines 3-5 and Worksheet 3). In these instances, it appears that CMS intends that instructions consistent with the corresponding instructions in the commercial MLR Annual Reporting Form Instructions will apply to Medicare MLR reporting. If this is correct, for clarity, we recommend that CMS revise the draft Medicare MLR Filing Instructions to include a statement that the instructions will be based upon those in the commercial MLR Annual Reporting Form Instructions for the specific fields or categories that CMS has identified as comparable. Prior to the next comment opportunity under the PRA, we also recommend that CMS revise the Medicare MLR filing instructions for these fields or categories to incorporate language drawn from the commercial MLR reporting instructions, so that Medicare plan sponsors will have complete instructions available in a single document.

Response

CMS has revised the instructions document to include additional details and clarifications.

Comment

Applicability to Contract Types. On page 2 under the "Background" heading in this section of the draft instructions, CMS notes the applicability of the Medicare MLR requirements to specific contract types but does not reference Medicare-Medicaid Plans (MMPs) and Employer Group Waiver Plans (EGWPs).

+ *Medicare-Medicaid Plans (MMPs).* In the preamble to the Medicare MLR final rule at 78 FR 31286, CMS indicates that during the development process for the Capitated Financial Alignment Demonstration, CMS will determine, in conjunction with the participating states, whether and to what extent to waive the Medicare MLR requirement for participating MMPs. For clarity, prior to the next comment opportunity under the PRA, we recommend that CMS add similar language under the "Background" heading to indicate that Medicare MLR requirements for MMPs will

be determined by the terms of the demonstration finalized between CMS and each participating state.

+ *Employer Group Waiver Plans (EGWPs).* The preamble to the Medicare MLR final rule also discusses EGWPs. At 78 FR 31286, the preamble states that Medicare MLR reporting requirements will apply to the Medicare-funded portion of each EGWP contract, and that CMS intends to provide additional information to EGWPs on how to determine the Medicare-funded portion either in sub-regulatory guidance or in the Paperwork Reduction Act notice and comment process. We urge CMS to issue EGWP guidance for review and comment as soon as possible to ensure that plan sponsors will have the information they need to prepare for implementation.

Response

CMS has revised the instructions document to include additional details and clarifications.

Comment

WORKSHEET 1, Section 2 – Data Collection, Line 1 – Revenue

Treatment of Unpaid Premium. This section of the instructions includes the categories of revenue that plans must report. CMS clarified in the preamble to the Medicare MLR final rule at 78 FR 31291 that plan sponsors "will include all beneficiary premium amounts under a contract in total revenue (the MLR denominator) minus any premium amounts that remain unpaid after reasonable collection efforts." We understand that it will be important for plan sponsors to have clarity about the treatment of unpaid premium as they work to comply with the reporting requirements and recommend that prior to the next comment opportunity under the PRA, CMS include in this section of the MLR filing instructions guidance consistent with the preamble language quoted above.

Response

CMS has revised the instructions document to include additional details and clarifications.

Comment

Line 1.1 and Line 1.2 (page 3). CMS is proposing to require plan sponsors to enter on Line 1.1 of Worksheet 1, the contract's revenue amounts for the reporting period for each of the categories of premium revenue listed (e.g., MA Basic, MA Mandatory Supplemental, Part D Basic and Part D Supplemental). The purpose of requiring reporting in these categories is not clear, and we understand their inclusion could substantially increase the complexity of completing the report. In addition, CMS is proposing to require plans to enter on Line 1.2, MA plan payments (based on A/B bid), using final risk scores. To promote consistent understanding by plan sponsors of the distinction between "premium" and "plan payments", we recommend that CMS provide more detailed instructions for populating these lines. For example, it is our understanding that Lines 1.1 a – g would include only beneficiary-paid premium amounts and Line 1.2 would include the amount of CMS payments to plans. Further, it appears that the amount of CMS payments would reflect amounts actually received, net of sequestration. We recommend that CMS address issues such as these in revised and more detailed instructions issued for the next PRA comment opportunity.

Response

CMS has consolidated Lines 1.1a, 1.1b and 1.1c into Line 1.1a, and consolidated Lines 1.1d and 1.1e into Line 1.1b.

In addition, CMS has revised the instructions document to include additional details and clarifications.

Comment

Line 1.9a – From state programs (ex: Medicaid, Platino, etc.) (page 4). The preamble to the final rule indicates that CMS does not believe the agency has the authority to include Medicaid costs and revenues in the Medicare MLR and CMS has included this line item in an item in the MLR Report that is designated as "informational only." We recommend that prior to the next PRA comment opportunity, CMS revise the instructions to provide details concerning completion of this line in the MLR report and that CMS provide an explanation of the purpose of the collection of this data.

Response

CMS has removed this field from the MLR Report.

Comment

Line 1.9b – From employers (for EGWP plans) (page 4). As noted above, the preamble to the final Medicare MLR regulation indicates that the agency intends to issue additional guidance for EGWPs for review and comment. We recommend that this guidance include detailed instructions for completing Line 1.9b on Worksheet 1 "other revenue" from employers that will clarify the information that plan sponsors will be required to report and explain the purpose of this reporting requirement which CMS has designated as "informational only."

Response

CMS has removed this field from the MLR Report.

Comment

Line 2 – Claims

Line 2.1b – PD. The Medicare MLR final rule indicates that Part D reinsurance amounts are included in both the numerator and denominator of the Part D MLR calculation. (See preamble at 78 FR 31288, §§423.2420(a)(2) and (b)(2)(i) which address the numerator and §423.2420(c)(1)(i) which addresses the denominator.) The draft Medicare MLR Report explicitly provides for Part D reinsurance to be included in the denominator. (See Worksheet 1, 1. Revenue, Line 1.5 "Part D federal reinsurance subsidy (prospective and reconciliation adjustments.") However, the report and instructions are not similarly clear about the manner in which reinsurance is included in the numerator. (See Worksheet 1, 2. Claims, Line 2.1 Claims incurred in CY 2014 and paid through 9/30/2015). For purposes of Line 2.1b, the meaning of "claims incurred" is unclear. Prior to the PRA comment opportunity, we recommend that CMS revise the instructions for Worksheet 1, Line 2.1b by adding a statement that Part D reinsurance is included in this line item.

Response

CMS has revised the instructions document to include additional details and clarifications.

Comment

Line 2.9b – Employers (for EGWP plans) (page 4). As noted above, the preamble to the final Medicare MLR regulation indicates that the agency intends to issue additional guidance for EGWPs for review and comment. We recommend that this guidance include detailed instructions for completing Line 2.9b on Worksheet 1, "other expenses" from employers that will clarify the information that plan sponsors will be required to report and explain the purpose of this reporting requirement which CMS has designated as "informational only."

Response

CMS has removed this field from the MLR Report.

Comment

Line 2.5 – Direct and Indirect Remuneration (DIR) (enter as negative) (page 4). CMS is proposing to require plans to report amounts related to Direct and Indirect Remuneration (DIR) as a negative amount on Line 2.5 in Worksheet 1. The preamble discussion at 78 FR 31290 explains that CMS revised the regulations at §423.2420(b)(2)(i) and §423.2420(b)(3) to clarify that "drug costs actually paid" refers to claims costs net of direct and indirect remuneration (DIR). These revisions included elimination of DIR from the list of exclusions in §423.2420(b)(3). In light of this revision, it is unclear how CMS intends the requirement for plan sponsors to report DIR as a negative amount in Line 2.5 is related to the requirement to enter "claims incurred" in Line 2.1b. Prior to the PRA comment opportunity, we recommend that CMS revise the instructions by adding language to explain that "claims incurred" means total claims paid rather than "direct drug costs actually paid" which are net of DIR (as provided in §423.2420(b)(2)(i)) or that CMS eliminate Line 2.5.

Response

CMS has revised the instructions document to include additional details and clarifications. In addition, CMS has revised the fields of the MLR Report such that DIR information is now collected in Line 2.8b (instead of Line 2.5). CMS also clarified the labeling of Line 2.8b to indicate that DIR should already be excluded from claims entered in previous lines.

Comment

While we appreciate the opportunity to comment on the hardcopy screen prints of the Medicare MLR Report and the related overview of the CY 2014 Reporting Year Filing Instructions, we urge CMS to provide an opportunity for review of detailed draft instructions, as well as testing of the report in Microsoft Excel.

Response

CMS has revised the instructions document to include additional details and clarifications. CMS will release the MLR Report in Excel format in early 2014 and the deadline for completed reports from organizations for Contract Year (CY) 2014 is late 2015.

Comment

I. Application of Commercial Medical Loss Ratio Guidance

Issue: CMS's current statements in the Medicare MLR Instructions leave ambiguity regarding the extent to which the commercial MLR standards may be relied upon by MA Organizations and Part D Sponsors.

Recommendation: BCBSA and Plans recommend that CMS amend the Medicare MLR Instructions to explicitly state that, unless the Medicare MLR regulation departs from the commercial MLR regulation with respect to a particular requirement, MA Organizations and Part D Sponsors may rely on the commercial MLR regulations, guidance, reporting instructions, and other resources when completing the Medicare MLR report.

Rationale: The commercial MLR reporting instructions are more detailed than the proposed Medicare MLR Instructions (49 pages vs. 7 pages), and there have been a number of subregulatory guidance documents issued to facilitate implementation of the commercial MLR requirements that address issues relevant to the Medicare MLR requirements. Given the relatively limited Medicare MLR guidance to date, there will be a number of ambiguities in the application of these requirements if MA Organizations and Part D Sponsors are not able to rely on the more expansive commercial MLR guidance.

CMS indicated in the Medicare MLR Instructions that the "Commercial MLR regulations, guidance, reporting instructions, and other resources" "provide additional information regarding CY2014 MLR reporting." Furthermore, CMS indicated in the Preamble to the Final Rule establishing the Medicare MLR requirements (Medicare MLR Final Rule) that the Agency "model[ed] Medicare MLR policy after the commercial MLR rules."1 A stronger statement affirming that MA Organizations and Part D Sponsors not only may obtain additional information from the commercial MLR guidance, but may, in fact, rely on this guidance would provide greater certainty for Plans and would permit CMS to leverage the significant amount of commercial MLR guidance that has been issued.

Response

CMS has revised the instructions document to include additional details and clarifications.

Comment

II. CMS Should Not Require Reporting of EGWP Experience in the First Year

Issue: The Medicare MLR Final Rule requires MA Organizations and Part D Sponsors to report "costs and revenue ... on the Medicare-funded portion of each [EGWP] contract."2 For the first Medicare MLR reporting year, requiring MA Organizations and Part D Sponsors to allocate revenue and expenses related to EGWP contracts between Medicare-funded and employer-funded categories would create significant operational challenges.

Recommendation: BCBSA and Plans recommend that CMS not require the reporting of EGWP revenue and claims expenses until the CY 2015 Medicare MLR report is submitted in 2016. As a result, the MLR calculation, including any MLR rebate calculation, for CY 2014 would not include EGWP experience.

Rationale: The Medicare MLR Final Rule indicates that "[a]dditional information regarding how to determine the Medicare-funded portion of each [EGWP] contract will be provided in subregulatory guidance or in the Paperwork Reduction Act notice and comment process."3 At this time, CMS has not provided any guidance regarding how to allocate EGWP revenue and expenses between the Medicare and employer-funded portions of the contract. Even once such guidance is issued, there are likely to be significant administrative challenges associated with such an allocation, particularly as it pertains to allocating EGWP expenses. As a result, BCBSA and Plans encourage CMS to begin EGWP reporting in the CY 2015 Medicare MLR Report. We separately address in these comments CMS's proposal to require reporting of EGWP employer-funded revenue and expenses in Sections IV.C and V.B, respectively.

Response
CMS has revised the instructions document to include additional details and clarifications.
CMS received and considered public comments regarding EGWPs during the MLR rulemaking process. The preamble to the final MLR rule stated: "The MLR statutory provision does not provide for an exemption for EGWPs and thus applies to contracts offering MA and Part D plans. As a significant percentage of MA enrollees are members of EGWPs (about 20 percent), we believe that it is important not to exempt EGWPs."

Comment
III. Revenue
A. CMS Should Clarify Amounts Reported in Lines 1.1 and 1.2
Issue: Issuers are required to report "Premium" in Line 1.1 and "MA plan payments (based on the A/B bid), using final risk scores" in Line 1.2. Although it seems that the Agency intends Line 1.1 to refer to beneficiary premium amounts and Line 1.2 to refer to the capitated payments received from CMS, this is not clear in either the instructions or the reporting form itself.
Recommendation: BCBSA and Plans recommend that CMS clarify in the Medicare MLR Instructions that Line 1.1 refers to beneficiary premium amounts and Line 1.2 refers to the capitated payments received from CMS.
Rationale: The requested clarification appears to be consistent with CMS's intent and would ensure that MA Organizations and Part D Sponsors apply a uniform interpretation of the amounts that must be reported in Lines 1.1 and 1.2.
Response
CMS has revised the instructions document to include additional details and clarifications.
CMS has also revised the labeling of fields of the MLR Report to provide clarification.

Comment
B. CMS Should Clarify that Uncollected Premium in Line 1.1g Refers to Amounts that Could Have Been Collected
Issue: Line 1.1g requires an MA Organization or Part D Sponsor to report "Uncollected premium" as premium revenue. This description is inconsistent with the Medicare MLR regulation, which indicates that only uncollected premium that an MA Organization or Part D Sponsor "could have collected" is included in reported premium revenue.
Recommendation: BCBSA and Plans recommend that CMS clarify in the reporting instructions that only uncollected premium that an MA Organization or Part D Sponsor "could have collected" should be reported in Line 1.1g. The Medicare MLR Instructions should also clarify in Line 1.1 that all premium amounts that are determined to be uncollectable "after reasonable collection efforts" should be excluded from reported premium.
Rationale: The current description in Line 1.1g could create confusion since it does not incorporate the regulatory limitation that uncollected premium must only be reported as premium revenue to the extent the MA Organization or Part D Sponsor "could have collected" such amount. This is particularly important since "uncollected premium" is not a reporting category in the commercial MLR instructions so MA Organizations and Part D Sponsors cannot rely on the commercial instructions for clarification. Further clarity could be provided by including a corresponding statement in the Medicare MLR Instructions that Line 1.1 excludes all premium

amounts determined to be uncollectable "after reasonable collection efforts" which is the standard referenced in the Preamble to the Final Rule.4

Response

CMS has revised the instructions document to include additional details and clarifications.
CMS has consolidated Line 1.1g with other fields in the MLR Report.

Comment

C. CMS Should Clarify that Statutory Accounting Must be Used to Report Medicare MLR

Issue: The proposed Medicare MLR Instructions do not indicate whether MA Organizations and Part D Sponsors should utilize Statutory Accounting Principles or Generally Accepted Accounting Principles when reporting their Medicare MLR. This could create confusion as to which accounting method is required.

Recommendation: BCBSA and Plans recommend that CMS clarify in the Medicare MLR Instructions that MA Organizations and Part D Sponsors must use Statutory Accounting Principles to report their Medicare MLR.

Rationale: The Preamble to the Medicare MLR Final Rule indicates that Statutory Accounting Principles are to be used when reporting an MA Organization or Part D Sponsor's Medicare MLR.5 This is not, however, reflected in the final regulations or the proposed Medicare MLR Instructions. Providing clarification that Statutory Accounting Principles should be used to report the Medicare MLR will eliminate existing ambiguity and ensure uniform reporting.

Response

CMS has revised the instructions document to include additional details and clarifications.

Comment

D. CMS Should Not Require Reporting of EGWP Employer Premiums

Issue: The Medicare MLR Instructions would require MA Organizations and Part D Sponsors to report EGWP revenue received from employers (Line 1.9b). Requiring MA Organizations and Part D Sponsors to report the employer-funded portion of EGWP revenue raises serious concerns about the disclosure of proprietary and confidential information.

Recommendation: BCBSA and Plans recommend that CMS permanently eliminate the requirement to report the employer portion of EGWP revenue in Line 1.9b.

Rationale: The employer-funded portion of EGWP revenue is determined pursuant to private negotiations between MA Organizations and Part D Sponsors and employers, and this information is not currently subject to CMS review or disclosure. As a result, information regarding the portion of EGWP revenue paid by employers is proprietary, and BCBSA and Plans are concerned that this information would become public if required to be reported, even if reporting is only for informational purposes. Furthermore, since this data must only be reported for informational purposes, excluding it from the Medicare MLR report will not affect the Medicare MLR calculation. As a result, even assuming EGWP reporting is not implemented for a year, once it is required, the employer premiums for EGWPs should not be required to be reported.

Response

CMS has removed this field from the MLR Report.

Comment

IV. Claims Reporting

A. CMS Should Clarify that Claims Incurred Includes Claims Reimbursed by the Part D Federal Reinsurance Subsidy

Issue: Line 2.1 requires MA Organizations and Part D Sponsors to report "Claims incurred" but does not clarify that this includes paid claims amounts that are reimbursed by the Part D reinsurance payment.

Recommendation: BCBSA and Plans recommend that CMS clarify in the MLR reporting instructions that claims incurred that are reported in Line 2.1 includes paid claims that are reimbursed by the Part D reinsurance payment.

Rationale: The Medicare MLR Final Rule indicates that incurred claims for prescription drug costs includes "[d]irect drug costs that are actually paid (as defined in § 423.308 …)."6 Claims payments under the Part D Program, regardless of whether they qualify for reimbursement under the Part D reinsurance payment, qualify as drug costs that are actually paid, so they fall within this definition of incurred claims. Also, since Part D reinsurance payments received must be reported as revenue in Line 1.5, these claims payments will be offset by the reinsurance payments received. As a result, the requested clarification would ensure Part D claims costs are accurately and consistently reported.

Response

CMS has revised the instructions document to include additional details and clarifications.

Comment

B. Claims Payment Recoveries Should Not Be a Separate Line Item

Issue: Line 2.4 would require MA Organizations and Part D Sponsors to separately report the amount of "Claims payment recoveries." Requiring these amounts to be reported as a separate line item would be inconsistent with the commercial MLR reporting requirements.

Recommendation: BCBSA and Plans recommend that CMS remove the separate line item for "claims payment recoveries" and instruct MA Organizations and Part D sponsors to incorporate these amounts in Line 2.1 as a reduction in the amount of claims incurred.

Rationale: Claims payment recoveries are overpayments to providers that have been recovered by the MA Organization or Part D Sponsor. The commercial MLR reporting instructions direct issuers to report claims payment recoveries as a component of the incurred claims line item rather than a separate line item.7 CMS should maintain consistency for the Medicare MLR requirements and require MA Organizations and Part D Sponsors to deduct claims payment recoveries from the claims incurred reported on Line 2.1, rather than requiring calculation of such an amount in a separate line item.

Response

CMS has removed this field from the MLR Report.

Comment

C. Contingent Benefit and Lawsuit Reserves Should be a Distinct Line Item

Issue: There is not a separate line item for reporting contingent benefit and lawsuit reserves even though such amounts are required by the Medicare MLR Final Rule to be included in incurred claims.8 The lack of a separate line item is inconsistent with the commercial MLR instructions.

Recommendation: BCBSA and Plans recommend that CMS provide a separate line item for reporting contingent benefit and lawsuit reserves in the claims portion of Section 2 in Worksheet 1 or alternatively specify which existing line item should include these costs.
Rationale: Consistent with the commercial MLR regulations, the Medicare MLR Final Rule requires contingent benefit and lawsuit reserves to be included in incurred claims. The commercial MLR reporting instructions require these amounts to be reported on a separate line item.9 In order to be consistent, the Medicare MLR Instructions should be revised to also provide a separate line item for reporting contingent benefit and lawsuit reserves or at least specify in what line item these costs should be included.
Response
CMS has added this field to the MLR Report.

Comment
D. CMS Should not Require Reporting of EGWP Employer Expenses
Issue: The Medicare MLR Instructions would require MA Organizations and Part D Sponsors to report the portion of EGWP claims paid by employers (Line 2.9b). Requiring MA Organizations and Part D Sponsors to report the employer-funded portion of EGWP claims raises serious concerns about the disclosure of proprietary and confidential information.
Recommendation: BCBSA and Plans recommend that CMS permanently eliminate the requirement to report the employer portion of EGWP expenses in Line 2.9b.
Rationale: As described above with respect to employer EGWP premiums that would be reported in Line 1.9b, information regarding the portion of EGWP expenses paid by employers is proprietary information and BCBSA and Plans are concerned that this information would become public if required to be reported, even if reporting is only for information purposes.
Furthermore, since this data must only be reported for informational purposes, excluding it from the Medicare MLR report will not affect the Medicare MLR calculation. As a result, even assuming EGWP reporting is not implemented until 2015, once it is required, the employer-funded portion of EGWP claims should not be required to be reported.
Response
CMS has removed this field from the MLR Report.

Comment
V. Worksheet 3
A. Incentive Pools and Bonuses Should Not be a Separate Allocation Category
Issue: Line 2 in Worksheet 3 requires Issuers to describe the expense allocation methods for "Incentive pool and bonuses." This is inconsistent with the commercial MLR reporting form, which only requires issuers to describe the allocation method for incurred claims but does not have a separate line item for the incentive pool and bonus payment category of incurred claims.
Recommendation: BCBSA and Plans recommend that CMS eliminate the separate line item for incentive pool and bonus payments on Worksheet 3.
Rationale: There are a number of claims payments categories that are required to be reported in Line 2 of Worksheet 1 of the proposed Medicare MLR reporting form and the only category of claims payments that has a separate line item on Worksheet 3 is the incentive pool and bonus category. This is also inconsistent with the commercial MLR reporting form, which does not have a separate line item for any particular category of incurred claims. Since incentive pool and

bonus payments are a type of incurred claims for purposes of the Medicare MLR requirements, the allocation methodology description that applies to the reported incurred claims would apply to incentive pool and bonus payments. For this reason, CMS should revise the Medicare MLR reporting form to provide that the allocation methodology description on Worksheet 3 applies to all reported incurred claims, including incentive pool and bonus payments.

Response

CMS has removed this field from the MLR Report.

Comment

We believe it would be helpful if more detailed instructions were provided for Section 2 - Data Collection / Area #1 - Revenue. We would like to clarify whether cell inputs for line 1.1 should include both member and CMS premium or member premium only. We also believe it would ensure consistency in reporting if CMS provided a standard mapping table from the MMR report fields to the MLR filing form for all lines from 1.1 through 1.7.

Response

CMS has revised the instructions document to include additional details and clarifications.
CMS has also revised the labeling of fields of the MLR Report to provide clarification.

Comment

MLR Report for Contract Year 2014 – Worksheet 1 Section 2: Data Collection
1. Revenue 1.6
To avoid confusion we recommend that 1.6 "Part D Low Income Premiums Subsidy Amount (LIPSA)" be included in 1.1d "Part D Basic" and removed as a separate line item.

Response

CMS has consolidated Line 1.1d into Line 1.1b, and revised the labeling of fields of the MLR Report to provide clarification.
In addition, CMS has revised the instructions document to include additional details and clarifications.
Line 1.6 remains a separate line item (distinct from Line 1.1b) as Line 1.6 captures revenue that the organization received from CMS while Line 1.1b captures revenue that the organization received from beneficiaries.

Comment

1.1d
We request that CMS confirm that their intent is that the imputed national average premiums for all EGWPs be represented in 1.1d "Part D Basic" field of worksheet 1 for EGWP beneficiary premiums.

Response

CMS has consolidated Line 1.1d into Line 1.1b, and revised the labeling of fields of the MLR Report to provide clarification.
In addition, CMS has revised the instructions document to include additional details and clarifications.

Comment
1.9b
Please define what type of data CMS is expecting to be reported in for 1.9b 'Other Revenue from Employers (for EGWP plans)' that is not represented elsewhere on the report.
Response
CMS has removed this field from the MLR Report.

Comment
2. Claims
2.1b
Please validate that 2.1b "PD" is the calculation of CPP+NPP from the CMS return file.
Response
CMS has consolidated Line 2.1b into Line 2.1. In addition, CMS has revised the instructions document to include additional details and clarifications.

Comment
2.9b
Other Employers "for EGWP plans" appears to indicate that EGWPs should not be included; however, we understand the rule set forth in the Federal Register to include EGWPs. Please clarify.
Response
CMS has removed Line 2.9b from the MLR Report.
In addition, CMS has revised the instructions document to include additional details and clarifications regarding EGWPs.

Comment
4. Health Care Quality Improvement Expenses Incurred
We understand that MTMP activities should be reported as health quality improvement activities since they are designed to improve health outcomes by improving medication use and patient safety, and to reduce medication errors' arising from adverse drug events, however, this isn't called out in the form. Please confirm it is CMS' expectation that MPMP be reported here.
Response
CMS has revised the instructions document to include additional details and clarifications.

Comment
7. Enter the list of plans offered under contract in CY 2014 included in this report
In situations where a beneficiary is identified on the MMR as residing in a territory and the plan service area does not include a territory, how would CMS expect to see this reflected on the report?
Response
CMS has added additional columns to this section and revised the labeling of fields to provide clarification. In addition, CMS has revised the instructions document to include additional details and clarifications.

Comment

Comments on Reporting Tool

The Medicare MLR reporting forms are very different from the forms used for commercial MLR reporting, although CMS' stated intent in the Medicare MLR regulation was to closely align the requirements for both. Kaiser Permanente recommends that the Medicare MLR forms should, as closely as possible, follow the forms used for reporting MLR for other lines of business in order to minimize the administrative burden on reporting health plans. Most health plans that participate in Medicare Advantage and Part D also participate in the commercial market and are already familiar with the commercial MLR forms. Having to complete a substantially different set of forms for Medicare MLR purposes will create an unnecessary additional burden on health plans because reporting health plans would need to make extensive and expensive systems changes to accommodate the level of requested detail for Medicare MLR reporting that is not needed for the commercial MLR forms.

Kaiser Permanente recommends that CMS use the HHS forms that have been used to report MLRs for commercial (as well as Federal) business as the starting point for the Medicare MLR forms and customize them as necessary to account for the unique structure of the Medicare KP programs. There is a strong and positive precedent for doing so. Taking into account the comments of Kaiser Permanente and other stakeholders, the Office of Personnel Management (OPM) ultimately adopted an amended version of the commercial MLR forms for reporting MLRs under the Federal Employee Health Benefits (FEHB) Program. OPM revised the commercial MLR form to ensure that it reflected data unique to FEHB and we recommend that CMS do the same in order to minimize health plan burden for Medicare reporting. We would be pleased to work with CMS to suggest revisions to the HHS forms both to capture the data CMS needs to accurately calculate MA and Part D plans' MLRs and to minimize the differences between reporting processes for different lines of business in which health plans participate. To illustrate the types of specific revisions that may be made to the HHS forms to accommodate Medicare reporting, please see the attached Exhibit. The Exhibit identifies straightforward revisions that may be made to the HHS commercial MLR forms to meet the needs of Medicare MLR reporting while avoiding administrative burden to health plans.

As explained in further detail below, there are a number of sections in the draft reporting tool where CMS is requesting revenue and expense data at a level of granularity that many (if not most) health plans do not maintain in their normal workflows and that appears to be unnecessary for calculation of the MLR and remittance. For example, the revenue section of Worksheet 1 includes seven line items representing "premium". It is unlikely that most health plans track enrollee premium revenue in the manner specified by the form and, therefore, the MLR reporting process would create both substantial additional administrative work and systems reconfiguration that are not necessary in order to achieve the purpose of the MLR policy. The Paperwork Reduction Act supporting statement provides: "The data collection of annual reports provided by plan sponsors for each contract will be used by CMS to ensure that beneficiaries are receiving value for their premium dollar by calculating each contract's MLR and any remittances due for the respective MLR reporting year."1 As such, CMS should limit the collection burden to only the information that is reasonably necessary to determine the MLR of each contract and the remittance amount to CMS, if any.

Response

CMS has revised and consolidated several fields of the MLR Report to be even more consistent with the commercial MLR reporting form. Since the Medicare program has some unique

characteristics (compared to commercial insurance policies) some differences in the reporting tools remain. As an example, an organization's revenue streams under the Medicare program are very different than under commercial insurance.
CMS has revised the labeling of fields in the MLR Report to provide clarification. In addition, CMS has revised the instructions document to include additional details and clarifications.

Comment
Worksheet 1
1. Revenue
The revenue portion of Worksheet 1 is confusing, contains unnecessarily granular line items, and does not follow a general ledger approach to accounting for revenue, as other MLR filings do.
First, the line items (and instructions that reiterate the line item labels) are unclear as far as the sources of the revenues. Our working assumption is that lines 1.1, Premium, are intended to capture enrollee-paid premiums, while line 1.2, MA Plan Payments, is intended to capture CMS-paid amounts following risk adjustment reconciliation. However, this division is not clear from the forms or instructions and we request that CMS provide clarification.
In addition, the revenue line items appear to mirror the revenue lines calculated by the MA and Part D bid pricing tools, which suggests that CMS may intend that health plans enter the same amounts in these lines as were entered in their bids. However, health plans do not receive payments in this segregated way and do not track revenue in this manner in their general ledgers. Specifically, the Premium line items for MA basic, mandatory supplemental and optional (lines 1.1a-c) and Part D basic and supplemental (1.1d-e) should be collapsed to mirror the HHS form for the reporting of premiums. Furthermore, if it is CMS' intent to compare the information supplied in the bids to that reported in the MLR, the difference in accounting principles used to construct the bid – Generally Accepted Accounting Principles (GAAP) – versus those used to account for expenses and revenues – Statutory Accounting Principles (STAT) – will prevent a direct comparison of these metrics.
Response
CMS has revised and consolidated several fields of the MLR Report to be even more consistent with the commercial MLR reporting form. Since the Medicare program has some unique characteristics (compared to commercial insurance policies) some differences in the reporting tools remain. As an example, an organization's revenue streams under the Medicare program are very different than under commercial insurance.
CMS has revised the labeling of fields in the MLR Report to provide clarification. In addition, CMS has revised the instructions document to include additional details and clarifications.

Comment
Lines 1.3, MA Rebate Allocations, would be difficult to report in this segregated manner as this would require health plans to make extensive systems reconfigurations. The rebate amounts received from CMS are counted as revenue and are not differentiated from other CMS revenues in the general ledger. As there is no need to segregate the rebate allocations in order to determine the MLR, and as it would be very administratively burdensome to do so, we request that CMS collapse lines 1.3a-c into a single line item representing all rebate amounts, including the rebate amounts allocated to reduce the Part B premium.

CMS' rationale for requesting this level of granularity in the premium and rebate allocation lines is unclear; this specificity is not needed to determine the revenues that comprise the denominator of the MLR calculation and would create substantially more work for reporting health plans. We recommend that lines 1.1a-1.1e be collapsed into a single line item to account for all member-paid revenues and that lines 1.3a-c be a single line representing all MA rebate amounts.

Response

CMS has revised and consolidated several fields of the MLR Report.

CMS has revised the labeling of fields in the MLR Report to provide clarification. In addition, CMS has revised the instructions document to include additional details and clarifications.

Comment

Finally, line 1.9 requests "Other Revenue" including from state/Medicaid programs (1.9a). However, the final rule states that CMS does not believe it has the authority to include Medicaid costs and revenues in the MLR calculation. Line 1.9b requests, for informational purposes, Employer Group Waiver Plan (EGWP) revenue from employers but does not specify whether the revenue to be reported is only that for the Medicare-funded portion of the contract, per the final MLR rule.2 Alternatively, perhaps it is CMS' intent to include employer-paid premiums for the Medicare-funded portion in lines 1.1, Premium, in which case it would be challenging to separate the employer-paid amounts. The instructions do not provide guidance as to the treatment of EGWP revenue (or claims), as suggested in the final rule. We request that CMS not include these informational revenues from the reporting form.

Response

CMS has removed this field from the MLR Report.

Comment

2. Claims

Lines 2.1 and 2.2 request that incurred claims and claims reserves be separated into MA and Part D claims. For integrated care delivery systems like Kaiser Permanente, internal provider costs are not determined based on claims and, therefore, separating the expenses for MA versus Part D (in particular for Part B drugs) would be extremely challenging and time intensive. Furthermore, this level of detail is not necessary for calculating the MLR for MA-PDs; the MLR can be calculated based on a reporting of all benefit expenses. For MA-only plans and stand-alone PDPs, these amounts would similarly reflect all amounts for covered services under those health plans. We request that CMS revise Worksheet 1 to include a single line for 2.1, Total Claims Incurred, and a single line for 2.2, Total Claims Reserves with clear instructions regarding the amounts to be included in each line. Whereas the commercial MLR forms provide detailed instruction regarding inclusions and exclusions, the Medicare instructions do not provide clear guidance.

Response

CMS has consolidated Lines 2.1a and 2.1b into Line 2.1, and consolidated Lines 2.2a and Line 2.2b into Line 2.2.

CMS has revised the instructions document to include additional details and clarifications.

Comment
According to the MLR regulation, incurred claims should include incurred but not reported claims (IBNR). Please confirm that line 2.2, Claim Reserves, is intended to capture IBNR.
Response
CMS has revised the instructions document to include additional details and clarifications.

Comment
We also request that CMS provide clear instructions regarding the following line items: Line 2.4, Claims Payment Recoveries, and line 2.7b, Total Fraud Recoveries that Reduced Paid Claims, may include some overlapping amounts. We request that CMS provide instructions regarding the differences between these amounts. We would also expect that claim payment recoveries due to overpayment are reflected through the net claims that are reported under Line 2.1, and would not be separately broken out.
Response
CMS has removed Line 2.4 from the MLR Report.
CMS has revised the instructions document to include additional details and clarifications regarding Line 2.7b.

Comment
Per the regulation, our understanding is that Direct and Indirect Remuneration (DIR) is already accounted for in incurred claims for drug costs. We request that CMS clarify the purpose for Line 2.5 and provide instructions as to the amounts to be included.
Response
CMS has revised the instructions document to include additional details and clarifications. In addition, CMS has revised the fields of the MLR Report such that DIR information is now collected in Line 2.8b (instead of Line 2.5). CMS also clarified the labeling of Line 2.8b to indicate that DIR should already be excluded from claims entered in previous lines.

Comment
Consistent with the discussion above on informational information under 1.9, please clarify if completion of line 2.9 will be optional.
Response
CMS has removed this field from the MLR Report.

Comment
Total Member Months
It is unclear whether and to what extent health plans are expected to take into account retroactive changes when reporting member months. For example, if on 12/31/14 a health plan includes a member, who subsequently expires or leaves the health plan, is the health plan expected to report the member months for that member for the contract year? We request that CMS provide clarification of this issue.
Response
CMS has revised the instructions document to include additional details and clarifications.

Comment

Comments on Reporting Instructions

Kaiser Permanente also requests that CMS provide substantially more detailed instructions about how to complete the reporting tool in the final form package. The accompanying instructions generally repeat the headings and line items on the worksheets and, as such, do not enhance understanding of what information is requested and the purpose such information will serve in calculating the MLR.

The instructions contain few definitions or explanations of the various line items requested. While we recognize that the final Medicare MLR regulation defines many of the terms used in the forms, it is important that the instructions directly incorporate the detail in order to ensure KP accurate and consistent reporting amongst all health plans. In addition, it is unclear to what extent the commercial MLR regulations, guidance and instructions are intended to apply to the Medicare MLR reporting. For example, the commercial MLR instructions include direction on how plans should treat non-premium revenue (e.g., allocations for the sale of assets to offset claims) whereas the Medicare MLR instructions do not provide any such guidance.

As part of the instructions, CMS should clarify whether certain line items are expected to reflect amounts as of the end of the contract reporting year (i.e. 12/31/14) or as of the date of the filing (after reconciliation of all revenues and expenses). The amounts reflected on health plans' general ledger at a given point in time are different than the final reconciled amounts. While the Medicare MLR regulation states that health plans are to account for MA and Part D revenues after risk adjustment, reinsurance and risk corridor reconciliations occur, the reporting forms should provide clear instruction as well.

The lack of clarity in the reporting instructions also is compounded in the PDF versions of the worksheet, since it is not possible to see whether there are formulas at work for some of the input fields and which fields will populate the calculation in Worksheet 2. We request that CMS release the functional Excel worksheets with the next draft of the form package.

We strongly encourage CMS to provide clear, detailed instructions to accompany the final forms so that health plans do not unintentionally misreport their MLRs.

Response

CMS has revised the instructions document to include additional details and clarifications. CMS will release the MLR Report in Excel format in early 2014 and the deadline for completed reports from organizations for Contract Year (CY) 2014 is late 2015.