

Response to Comments Received
Federal Register Notice (78 FR 70059 and 79 FR 5417) on Revised CMS-10418

Table of Contents

Introduction 1
Comments on the 2013 MLR Annual Reporting Form and Instructions 1

Introduction

CMS received 2 public comments on 12 specific issues regarding the notice of the revised Medical Loss Ratio (MLR) PRA package published in the Federal Register on November 22, 2013 (78 FR 70059) with comments due by January 21, 2014. CMS also received 2 public comments on 7 specific issues regarding the notice of the revised MLR PRA package published in the Federal Register on January 31, 2014 (79 FR 5417) with a comment period deadline of March 5, 2014. Comments were received from America’s Health Insurance Plans (AHIP) and the Blue Cross and Blue Shield Association (BCBSA).

The PRA package contains the version of the MLR Annual Reporting Form for the 2013 MLR reporting year, which health insurance issuers must file with CMS by June 1, 2014, and the instructions for completing the form. It modifies the MLR Annual Reporting Form approved by OMB, on May 3, 2013, for the 2012 MLR reporting year, OCN 0938-1164.

The comments CMS received regarding the 2013 MLR Annual Reporting Form and Instructions are summarized immediately below. Most of the comments addressed clarifying the instructions, updates for recent guidance issuance, treatment of Student Health Plans, treatment of ACA fees, adjusted MLR standard experience aggregation, annual Mini-med multipliers for credibility determination, reporting for both QIA and non-claims costs and reporting requirements for businesses in run-off. The summary below sets forth each comment and our response.

Comments on the 2013 MLR Annual Reporting Form and Instructions

Requests for Clarification and Typographical Errors

1. Three comments requested that the reporting instructions match the 2012 MLR reporting instructions regarding direct written premiums and unearned premiums to reduce potential burden and expenses. In 2012, issuers were given an option of reporting premium for coverage only in the MLR reporting year, or to continue reporting premium using traditional accounting method.

CMS Response

CMS revised the instructions as requested.

2. One comment requested pre-funded ACA fees to be reported as unearned premium or experience rated refund. Two comments request that the policy for the reporting of these fees be applied to calendar year policies and extended to future years.

CMS Response

CMS made no changes based on this comment. However, CMS revised the instructions to reflect guidance issued on December 30, 2013 allowing for one-year deferral of pre-funded 2014 ACA fees and their associated taxes for non-calendar year policies in the 2013 MLR reporting year.

3. One comment requested that the instructions for reporting contract reserves in Part 2, Line 2.6b be amended to exclude contract reserves accrued prior to 2011.

CMS Response

CMS made no change based on this comment. Contract reserves are generally established to set aside a portion of premium to pay for claims incurred in future years. It is appropriate for the MLR formula to recognize any increase or release of contract reserves in order to correctly reflect the value that policyholders receive for their premium dollar.

4. One comment requested that Student Health Plans experience from both 2011 and 2012 be included in the calculations for the 2013 MLR reporting year.

CMS Response

CMS made no change based on this comment. The regulation states that “For the 2013 MLR reporting year, an issuer's MLR is calculated using the data reported under this part for the 2013 MLR reporting year only.” (45 CFR 158.120(d)(5))

5. Two comments requested that issuers be permitted to restate Quality Improving Activity (QIA) expenses related to prior year’s reporting in any current MLR reporting year.

CMS Response

CMS made no change based on this comment. The instructions allow issuers to correct errors in a prior year’s QIA reporting but not to restate or include new QIA expenses associated with the prior reporting year.

6. One comment requested the inclusion of each year’s multiplier factor for the treatment of Mini-med claims experience to determine the proper credibility adjustment for the MLR reporting year. One comment requested a change to the formula for calculating the Mini-med MLR numerator.

CMS Response

CMS has updated the instructions to clarify the correct annual multipliers for 2011, 2012 and 2013 Mini-med experience to determine the correct credibility adjustment for the 2013 MLR calculation. CMS made no change to the Mini-med MLR numerator formula because the current formula is consistent with the December 7, 2011 Final Rule (76 FR 76574) and April 20, 2012 CCIIO Technical Guidance (CCIIO 2012-002), Q&A #36.

7. Two comments requested that the form and instructions reflect the MLR technical guidance allowing issuers, in states with adjusted MLR standards, to include a scaling adjustment in their MLR numerator.

CMS ResponseCMS revised the instructions as requested.

8. Two comments requested a listing of validation formulas so that issuers can correct their MLR reports before uploading them into HIOS.

CMS Response

CMS agrees with the suggestion. In a supplemental document, CMS will publish a listing of potential validation errors and warnings that issuers may encounter when uploading their MLR reporting forms into HIOS.

9. One comment requested a formula tool so that issuers can check calculations in their MLR reports before uploading them into HIOS.

CMS Response

CMS agrees with the suggestion. In a supplemental document, CMS will publish a formula tool so that issuers can check calculations in their MLR reports before uploading them into HIOS. The formula tool will not be part of the PRA.

10. One comment requested that CMS disallow reporting of non-claims cost in the 3/31 column, dual contract column and deferred business columns, since these costs do not impact the MLR calculation.

CMS Response

CMS has not updated the instructions based on this comment. The form permits adjustments to non-claims expenses for: dual contracts, deferred business and possible assumptive reinsurance. The cells are to be completed by issuers as instructed, if applicable.

11. One comment requested that CMS exempt businesses in run-off with no active policies or membership in the MLR reporting year from the MLR reporting requirements.

CMS Response

CMS has not updated the instructions based on this comment. CMS will consider the comment for possible future changes.

12. One comment requested that the January 2013 tri-departmental guidance regarding fixed indemnity plans not be implemented for MLR purposes until the 2014 reporting year. The guidance generally requires issuers to report experience of plans that issuers categorize as “fixed indemnity”, but that pay benefits on other than a per-period basis.

CMS Response

CMS revised the instructions as requested.

13. One comment requested clarification concerning the treatment of PCORI fees in issuers' MLR reporting. Specifically, issuers wish to report PCORI fees incurred during the applicable reporting year regardless of payment date.

CMS Response

CMS updated the instructions allowing for incurred fees to be used in the reporting for the applicable MLR reporting year; similar language is used in the instructions for federal taxes.