

**Responses to Comments Received on the Revised CMS-10418
Federal Register 60-Day Notice (80 FR 5118)**

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A. Introduction

CMS received 3 public comments on a number of specific issues regarding the notice of the revised Medical Loss Ratio (MLR) PRA package published in the Federal Register on January 30, 2015 (80 FR 05118). The 60-day comment period closed on March 31, 2015.

The PRA package contains two collections of information: the MLR Reporting Form (including the Risk Corridors component) that issuers must file with CMS each year by July 31 and the accompanying Form Instructions, and the Rebate Notices that issuers must send to subscribers and policyholders each year no later than September 30. The PRA package modifies the 2013 MLR Annual Reporting Form and Rebate Notices, both of which were previously approved by OMB under OMB Control Number 0938-1164.

Most of the comments addressed clarification of the instructions, correction of errors and inconsistencies, treatment of cost-sharing reduction payments, treatment of prior year MLR rebates, treatment of business ownership changes under risk corridors, and definitions of billable premium and premium earned. The summary below sets forth each comment and our response.

B. Comments on the 2014 MLR Reporting Form, Rebate Notices, and Instructions

1. Three comments noted several typographical and formula errors on the MLR and Risk Corridors forms and instructions.

CMS Response

CMS corrected the errors as requested.

2. Three comments suggested that the risk corridors columns of the MLR Form (columns 2A and 7A) should exclude both non-grandfathered, non-ACA compliant plans and grandfathered plans.

CMS Response

Grandfathered plans were previously excluded from columns 2A and 7A. CMS revised the instructions as requested to clarify that plans that are not grandfathered and that are not ACA compliant are also excluded from columns 2A and 7A. CMS also added a definition of non-ACA compliant to the 2014 MLR Reporting Instructions to clarify the types of plans

that are excluded from reporting in columns 2A and 7A.

3. One comment requested that the instructions clarify that issuers who did not offer QHPs in 2014 do not need to complete the risk corridors columns on the MLR Form or the Risk Corridors Plan Level Data Form.

CMS Response

CMS revised the instructions as requested.

4. One comment requested that the instructions clarify that issuers may use the NAIC's statutory accounting principles when reporting Federal reinsurance, risk adjustment, and risk corridors amounts in the 12/31 columns of the MLR Form; and that issuers may report in the 3/31 columns amounts paid or received under these programs after 3/31.

CMS Response

CMS made no change based on the comment regarding the 12/31 columns. The instructions for the 12/31 columns already state that the amounts in these columns should equal the amounts reported on the NAIC's Supplemental Health Care Exhibit (SHCE). However, CMS revised the instructions to highlight this fact, and also revised the instructions for the 3/31 columns to enable the line instructions for Part 2 Lines 1.9-1.11 to control.

5. One comment requested that the instructions permit the use of accruals for expected adjustments as a result of appeals of Federal reinsurance and risk adjustment payment or charge amounts.

CMS Response

CMS made no change based on this comment. Such adjustments will be reflected in MLR calculations for subsequent years.

6. Three comments requested that the MLR Form and Instructions be revised to permit use of estimated cost-sharing reduction payments. One comment additionally requested that the cost-sharing reduction differential amounts be embedded in the various incurred claims component lines.

CMS Response

CMS made no change based on this comment. CMS will provide guidance with respect to treatment of cost-sharing reduction payments at a later date.

7. One comment requested that the instructions clarify that issuers may report the entire amount of Federal reinsurance contributions on MLR Form Part 1 Line 3.3a.

CMS Response

CMS revised the instructions as requested.

8. One comment requested that the instructions clarify that issuers may report Exchange user fees and risk adjustment user fees on MLR Form Part 1 Line 3.3b.

CMS Response

With respect to Exchange user fees, CMS revised the instructions as requested, to reflect the April 20, 2012 technical guidance. However, as CMS previously stated in regulations and sub-regulatory guidance, risk adjustment user fees may *not* be reported as Federal and State regulatory authority licenses and fees deductible from premium for MLR purposes.

9. One comment requested that CMS provide information regarding the format of the Federal reinsurance and risk adjustment amounts notifications.

CMS Response

CMS anticipates the notifications to be available in CSV format and to include Issuer ID, Issuer Legal Name, State, and Payment or Charge amount.

10. One comment requested that the MLR Form not collect information on the advance payments of the premium tax credit (APTC).

CMS Response

CMS made no change based on this comment. This information is needed to facilitate validation of APTC reporting and, similarly to certain other lines, to alert issuers to the fact that the APTC amounts must be included in earned premium.

11. Two comments requested that the MLR Form and Instructions be revised to account for prior year rebates in the MLR numerator.

CMS Response

CMS made no change based on this comment. The MLR regulation at 45 CFR §158.221 unambiguously does not permit inclusion of prior year rebates past the 2013 reporting year.

12. One comment recommended simplifying the accounting for the Federal reinsurance payments in calculations.

CMS Response

CMS made no change based on this comment. While CMS shares the commenter's preference for simplified calculations, the specific calculation methodology in question is necessary for compliance with the statute and the regulations.

13. One comment requested removal of references to SHCE lines from the MLR Form where the lines do not directly correspond.

CMS Response

CMS removed the references as requested.

14. One comment requested that Rebate Notices be revised to include an explanation that the rebate is calculated as a percentage of premium after certain adjustments.

CMS Response

CMS made no change based on this comment. CMS recognizes that the current language

has created confusion for some policyholders, and has previously considered revising it. However, the Notices refer to percentage of premium multiple times, rather than in only the one sentence quoted by the commenter. The Notices also require inclusion of the actual aggregate premium amount in addition to specifying the percentage that must be rebated. Consequently, revising the Notices to refer to adjusted premium in one sentence but preserving all the remaining references to unadjusted premium, as the comment suggests, is likely to be equally confusing. Revising the Notices to accurately describe the technical adjustment in every reference would significantly reduce readability. And revising the Notices to include a simple qualifier such as “after-tax” premium would, again, be confusing to the policyholders, who are likely to assume that the reference is to the policyholders’ taxes, rather than to an allocated portion of the insurer’s taxes.

15. One comment requested clarification that risk corridor allocations be made in accordance with §153.520, such that allowable administrative costs are allocated across its business pro rata by premiums earned.

CMS Response

CMS confirms that, as set forth at 45 CFR 153.520, allowable administrative costs must reflect an amount equal to the pro rata portion of the aggregate amount of such expense across all of the QHP issuer’s non-grandfathered health plans in a market within a State, allocated to the QHP based on premiums earned.

16. One commenter requested confirmation that “Administrative Costs Excluding Taxes” in Part 3, Line 3.2 of the MLR Form should include “Other Taxes” (Part 1, Line 5.5).

CMS Response

CMS has revised the instructions for Line 3.2 as requested so that it excludes the sum of Part 1 Lines 5.5a and 5.5b.

17. Two commenters recommended that Line 3.5a, “Earned Profit” in Part 3 of the MLR Form should be adjusted for CSRs, reinsurance payments, and risk adjustment net payments, Lines 1.4, 1.5, and 1.6, respectively.

CMS Response

CMS revised the formula description for earned profit as requested so that earned premiums are reduced by allowable costs, which include adjustments for reinsurance, risk adjustment, and CSR payments.

18. Two commenters recommended that Part 3, Line 3.6a of the 2014 MLR Form should be profit and administrative costs including taxes rather than excluding taxes.

CMS Response

CMS did not make the requested change. As defined in the 2014 Payment Notice and the regulations at 45 CFR 153.500, allowable administrative costs in the risk corridors formula are equal to the lesser of: 1) profit and administrative costs excluding taxes and 2) capped administrative costs (which include taxes).

C. Comments on the Risk Corridors Plan-level Data Form and Instructions

1. Three comments requested that the Risk Corridors Plan-level Data Form (Risk Corridors Form) and Risk Corridors Plan-level Data Form Instructions (Risk Corridors Form Instructions) use the term “earned premium” instead of “billable premium”, to ensure that premiums reported match the period for which coverage was provided.

CMS Response

CMS changed all instances of “billable premium” in the Risk Corridors Form and Risk Corridors Form Instructions to “premium earned” as requested. The term “premium earned” has the meaning defined at 45 CFR 153.500.

2. Two comments requested that CMS clarify the treatment of changes of ownership and assumption reinsurance in the Risk Corridors Form Instructions, so that it is consistent with the MLR instructions.

CMS Response

CMS revised the instructions as requested to clarify that the treatment of changes of ownership is the same for the risk corridors program and the MLR program.

3. One comment noted an inconsistency in the calculation descriptions for Tab 3, Line 1 in Appendix A of the Risk Corridors Form Instructions and the Risk Corridors Form.

CMS Response

CMS revised the calculation description in Appendix A of the Risk Corridors Form Instructions to match the calculation of “Total Percentage of Market Premium in QHPs” in Tab 3, Line 1 of the Risk Corridors Form.

4. One commenter noted that, although Table 4 was detailed in the Risk Corridors Instructions, Table 4 (columns K-N) was not shown in the form provided, for substantially similar plans.

CMS Response

CMS did not make any change based on this comment. Table 4 (columns K-N) was included in the form that was published for 60-day public comment and posted on the CMS and CCIIO website.