Responses to Comments Received on the Revised CMS-10418
Federal Register 60-Day Notice (81 FR 8498)

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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 February 19, 2016 (81 FR 8498). The 60-day comment period closed on April 19, 2016.

The PRA package contains two collections of information: the MLR Annual 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 2014 MLR Annual Reporting Form, which was previously approved by OMB under OMB Control Number 0938-1164. The Rebate Notices, which were also previously approved under the same OMB Control Number, are not being revised at this time.

Most of the comments addressed clarification of the instructions, correction of errors and inconsistencies, treatment of cost-sharing reduction payments, and the treatment of risk adjustment amounts. The summary below sets forth each comment and our response.

B. Comments on the 2015 MLR Annual Reporting Form and Instructions

1. Two comments noted several typographical errors on the MLR Form Instructions.

   CMS Response
   CMS corrected the errors as requested.

2. Four comments suggested that Part 2, Line 2.18 and Part 3, Line 1.4 – both named "Advance payments for cost-sharing reductions" – be renamed to "**Reconciled** payments of cost-sharing reductions."

   CMS Response
   CMS revised the form and instructions as requested.

3. Two comments recommended that the difference between cost-sharing reductions (CSRs) previously reported in the 2014 MLR Form and actual reconciled CSRs (what is to be

entered in the PY1 column in Part 3, Line 1.4) also be included in the 2015 risk corridors calculation.

CMS Response
CMS revised the instructions as requested. In the 2015 reporting cycle, issuers will report a reconciled CSR amount that reflects: the reconciled CSR amount for the 2015 benefit year (as reported to the issuer by CMS), minus the difference between the CSR amount reported by the issuer in the 2014 reporting cycle and the reconciled CSR amount for the 2014 benefit year (as reported to the issuer by CMS).

4. Two comments requested clarification regarding the date as of which issuers should report the 2014 risk adjustment amounts (as previously reported in the 2014 MLR Form or the updated amount paid or received after filing the 2014 MLR Form (in reference to the PY1 column in Part 3, Line 1.6)), and further recommended that the difference between previously reported and actually paid risk adjustment amounts be included in the 2015 risk corridors calculation.

   CMS Response
   CMS has revised the Form Instructions to clarify that in the MLR columns, issuers should report the total actual risk adjustment transfer amount paid or received for the 2014 benefit year, including adjustments made after filing the 2014 MLR Form. In the RC columns, the risk adjustment amount will reflect any difference between what was reported for the 2014 benefit year on the 2014 MLR Form, which was likely the June 30th report amount, and what was actually paid to the issuer for the 2014 benefit year. Therefore, in the 2015 reporting cycle, issuers will report total risk adjustment amount that reflects: the risk adjustment transfer amount for the 2015 benefit year (as reported to the issuer by CMS on the June 30, 2016 report), minus the difference between the risk adjustment amount reported for the 2014 benefit year on the 2014 MLR Form and what was actually paid to the issuer for the 2014 benefit year.

5. Two comments requested that the Form Instructions for Part 1, Lines 3.2a and 3.2b allow for the matching of guaranty fund assessments with offsetting values in accordance with each State’s provisions for such offsets.

   CMS Response
   CMS revised the instructions as requested. Entities will have the option to include guaranty fund assessments in the current year reporting cycle or defer reporting these assessments until the subsequent reporting cycle.

6. One comment requested that Part 1, Line 3.3a (“Federal transitional reinsurance programs contributions) be eliminated and these amounts instead be included under Line 3.1d (“Other Federal Taxes and assessments deductible from premium”), which would place them in the same subsection as on the Supplemental Health Care Exhibit (“SHCE”) that issuers file with State regulators.

CMS Response
CMS made no changes based on this comment. Reinsurance contribution amounts have already been reported in this manner (in Part 1, Line 3.3a) for the 2014 MLR reporting year. Unlike the SHCE, the MLR form would collect these amounts on separate lines either way, so moving the amounts would not reduce the burden. Reinsurance contributions are not considered Federal taxes. Furthermore, the collection of this data element will be eliminated next year, as the reinsurance program is temporary.

7. One comment requested that risk adjustment user fees be removed from Part 1, Line 3.3b ("Other Federal and State regulatory authority licenses and fees") and instead be included under Line 3.1d ("Other Federal Taxes and assessments deductible from premium").

   CMS Response
   CMS made no changes based on this comment. Risk adjustment amounts have already been collected in this manner (in Part 1, Line 3.3b) for the 2014 MLR reporting year. This approach was based on previously issued guidance that clarifies the treatment of risk adjustment user fees and is consistent with the treatment of Exchange user fees. Therefore, moving the risk adjustment user fees to a different line could cause confusion.

8. Two comments recommended that premium stabilization reserves be removed from the "Exclude" list and added to the "Include" list for Part 1, Line 1.5 and Part 2, Line 2.9 (reserves for experience rating refunds).

   CMS Response
   CMS made no changes based on this comment. Unlike experience rating refunds, where reserves are typically paid out within a year, premium stabilization reserves may not be used to lower premium until years after premium was paid, making it substantially less likely that the subscribers who paid the premium would receive the value.

9. One comment recommended that there should be an allowance if an issuer does not receive the full reinsurance or risk adjustment amount CMS reported after June 30, 2015, and that CMS should issue guidance on how to handle scenarios in States where the amounts are still under appeal.

   CMS Response
   CMS made no change based on this comment. As CMS stated in the Notice of Benefit and Payment Parameters for 2017, issuers must include any reinsurance, risk adjustment, risk corridors, and cost-sharing reduction amounts as updated by CMS up to August 15, 2016 in the 2015 MLR Form. However, issuers are not required to resubmit if the impact to their recalculated risk corridors transfer or MLR rebate is $25 of lower. Any subsequent changes (such as modifications following *resolved* appeals) should be included in the MLR Form filed for the following year.

10. Two comments recommended that the timing of any CMS revisions to the reinsurance and risk adjustment amounts sent in the 6/30 reports to issuers should be issued no later than a deadline of 7/15/16, and if CMS does not meet this deadline, affected issuers be given an

extension on their reporting window equal to the time of any delayed adjustments from CMS beyond 7/15.

CMS Response
CMS made no changes based on this comment. If CMS has updated any reinsurance, risk adjustment, risk corridors, and cost-sharing reduction amounts after publication of the June 30th report, issuers must resubmit their 2015 MLR or risk corridors filings to reflect these updated amounts. As stated in the Notice of Benefit and Payment Parameters for 2017, CMS will only require issuers to resubmit their 2015 MLR form if the issuer is notified of a chance in amounts prior to August 15, 2016. However, issuers are not required to resubmit if the impact to their recalculated risk corridors transfer or MLR rebate is $25 of lower. For those issuers who may be notified of an adjustment to their reinsurance or risk adjustment amounts by August 15, HHS will work with the issuer to facilitate resubmission of its MLR and risk corridors reports and to address the impact on MLR rebates, if necessary, in a manner that limits additional operational burden for the issuer.

11. One comment recommended that Part 3, Line 7.2 (true-up of 2014 incurred claims) be added to the formula for Part 3, Line 3.3a ("Profit") to account for the adding of Line 7.2 to Line 3.1 ("Allowable Costs").

    CMS Response
    CMS made no changes based on this comment. Adjustments to allowed claims amounts that are made to account for overstated or understated allowed claims amounts that were reported in the 2014 reporting cycle, will impact the calculation of allowable costs. All parameters, such as earned profit, that are calculated based on allowable costs will be calculated based on the reported allowable cost amount, without any further adjustment. CMS's decision not to add line 7.2 in the calculation of profit is consistent with the treatment of other adjustments to allowable costs (such as risk adjustment and cost-sharing reduction amounts in the profit calculation, and also ensure that the risk corridors calculation for 2015 is consistent with the risk corridors calculation for 2014.

12. One comment requested that the instructions for earned premium in Part 3, Line 2.1 be changed so that it is adjusted by the restated, rather than original premium stabilization amounts (2015 Form, Part 3, Lines 1.5-1.7, PY1 Column), similarly to incurred claims in Part 3, Line 1.8.

    CMS Response
    CMS made no changes based on this comment. Subtracting Lines 1.5-1.7 from earned premium in Line 2.1 serves merely to ensure that those amounts don't have any net impact on the denominator, since these amounts were previously added to earned premium in Part 1. Therefore, earned premium should be modified only by the original amounts.

13. One comment requested clarification on how to report something not addressed in the instructions nor in the reporting template, specifically on where to report State reinsurance receipts.

CMS Response

CMS added clarifying language to the Form Instructions to address this. (Receipts from certain State reinsurance programs should be deducted from claims paid in Part 2, Line 2.1.)

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

1. Two comments noted that CMS posted updates to the intermediate, rather than final 2014 Risk Corridors Plan-Level Data Form Instructions.

   CMS Response

   CMS revised the instructions as requested.

2. One comment recommended that CMS include clarification to address the unique scenario that occurs when an active purchaser State Exchange limits the options or number of standard plans to be offered on a State-based Exchange. This has already occurred, affecting some QHP issuers' QHP plan offerings in active purchaser states in 2015, and may impact QHPs in 2016. The uniquely affected QHPs in these scenarios, previously approved QHPs in the State Exchanges, now offered only off-Exchange by merit of the ACA guaranteed issue requirements, or by the requirement of the State regulators, should not be denied risk corridor protection simply because the State Exchange determined to limit the number of QHP offerings.

   CMS Response

   Plans may be included in risk corridors calculations if they are offered through an Exchange, have benefits, cost-sharing structure, service area, and provider networks that are exactly the same as a plan offered through an Exchange, or if they are exactly the same as a plan offered through an Exchange (based on the previous definition) except for differences that are exclusively and directly the result of State or Federal benefit mandates. If the plan meets this definition, the issuer may report the associated plan-specific premium on the risk corridors plan-level data form, for inclusion in the calculation of risk corridors payment and charge amounts.

3. One comment recommended that this year post-filing data validation should not occur so close to the MLR rebate payment due date. In the event that CMS performs later audits, the commenter proposed that CMS should utilize a 3% data variance threshold similar to what it does in other lines subject to MLR and audited by CMS, such as in the Medicare program. The commenter also recommended that any findings be adjusted in the subsequent year's MLR and RC filings.

   CMS Response

   CMS conducted more comprehensive data validation for the 2014 benefit year, as this was the first year of risk corridors data reporting. We do not intend to request additional reporting of claims and premium information for risk corridors data that is submitted for the 2015 benefit year. CMS still intends to examine risk corridors data submitted to identify whether any issuers are outliers for claims and premiums based on the data that they have submitted through the EDGE server, and will contact the issuer if it is identified as an outlier. Issuers with claims and premium inconsistencies may be target for audit.

4. One comment requested that in the third bullet (on page 4) of the General Instructions of the RC Form Instructions the following sentence be deleted: "Risk Corridor zip file uploads will be allowed after the full MLR attestation has been completed." It is inconsistent with the determinations made by CMS/CCIIO previously, and conflicts with the instructions in the General Instructions on the MLR Form.

   CMS Response
   CMS revised the instructions as requested.

5. One comment requested a clarification that CMS is expecting earned premium on the Risk Corridor Plan Level Form. The commenter recommended a return to use of "premium earned", and the relevant revisions to change "billable premiums" to "premium earned" throughout in the 2015 RC Form Instructions. Insurers use “premium earned, not billable premium. Based on the 2014 MLR/Risk Corridors Submission Checklist, insurers were required to attest to Premium Earned. For example, they were required to attest that the “Premium earned in Part 3, Line 2.1 of the MLR Form matches Total Premium Earned in Table 1 of the Risk Corridors Plan-level Data Form, for both the Individual and Small Group markets.” And the while the Instructions refer to billable, the Plan-Level Data Reporting Form continues to use "earned premium" in the worksheets (Column, E, I, etc.)

   CMS Response
   CMS revised the instructions as requested.

6. One comment informed CMS that the definition of "premium earned" had been removed from the General Instructions on page 3, and instead the definition of "billable premium" was inserted in the Individual Tab 1, Table 1, Column A Definitions and Instructions, and also in the group Tab 2, Table 1, Column A Definitions and Instructions. The definition of "billable premium" in the 2015 RC reporting form instructions notes are where "total billable premium is the total premium charged for members in all policies that were written directly or acquired by the insurer during the full reporting year. The comment also pointed out that “Premium earned” was included in the General Definition on page 3 in the 2014 Instructions "as defined at 45 CFR 153.500 and 145 158.130, all monies paid by a policyholder or subscriber as a condition of receiving coverage from the insurer, including any fees or other contributions associated with the health plan and reported on a direct basis. Includes advance payments of the premium tax credit.”

   CMS Response
   CMS revised the instructions as requested.

7. One comment points out that in Appendix A: Page 16 the row for Table 4 Column N has accidently been omitted and should be reinserted. The description of the formula for N - which should be "Auto -calculated for the user: Table 4 Column M divided by Table 1, Column A" is inappropriately placed as the formula for Tab 3, "Risk Corridors Payment and Charge Calculation", Line 1. The correct calculation reference for Tab 3, “Risk

Corridors Payment and Charge Calculation", Line 1 should state: "Auto-calculated for the user: Column F + Column J + Column N.

CMS Response
CMS revised the instructions as requested.

8. One comment received mentioned Appendix A: Page 17, which contains instructions that reference the fields on the RC form: Tab 3, Line 8, where the calculation reference states that this is a "user input" cell, but this cell is "auto- calculated for user." At Tab 3, "Risk Corridors Payment and Change Calculation," Line 9 the calculation reference details appear to refer to Line 3 in places where it should be referring to Line 7, which is consistent with the Risk Corridors Plan Level Form. The comment recommended the following changes:

   - If Line 8 is at least 108%: 80% x (Line 2 – 108% x Line ~~3~~7) + 2.5% x Line 7.
   - If Line 8 is at least 103% but less than 108%: 50% x (Line 2 – 103% x Line ~~3~~7).
   - If Line 8 is at least 97% but less than 103%: zero (0)
   - If Line 8 is at least 92% but less than 97%: 50% x (Line 2 – 97% x Line 7).
   - If Line 8 is less than 92%: 80% x (Line 2 – 92% x Line ~~3~~7) – 2.5% x Line 7.

   CMS Response
   CMS revised the instructions as requested.

9. One comment highlighted a concern related to potential changes to risk adjustment amounts in the event of insolvencies of insurers. The commenter recommended that if the risk transfer formula suggests insolvent insurers owe a significant amount of money to CMS, CMS should provide remaining market insurers with the expected netting that will occur due to such insolvencies. Including this in the final Risk Adjustment and Reinsurance Summary Report to be released by June 30th will allow plans to reflect a more accurate expected risk adjustment payment or receivable in the MLR / risk corridor calculations. Without this data insurers will have no assurance that the MLR and risk corridor calculations they make can rely on expected risk adjustments.

   CMS Response
   In the 2014 Benefit Year Summary Report on Transitional Reinsurance Payments and Risk Adjustment Transfers, we did remove one issuer from the affected risk pool's expected receipt of a default charge allocation amount resulting from the issuer's assessed default risk adjustment charge. To the extent possible, we would not include amounts in a risk pool that we believe are unlikely to be paid by an issuer owing a risk adjustment charge facing insolvency. That said, in the event an issuer does not receive a full risk adjustment payment due to an issuer not paying the full risk adjustment charge, the difference can be adjusted for on the following year's MLR/RC filing.