

Supporting Statement
Request for Adjustment to the MLR Standard for a State's Individual Market
(CMS-10361 - OMB Control Number - 0938 -1114)

A. Justification

1. Circumstances Making the Collection of Information Necessary

Section 2718 of the Public Health Service Act (PHS Act) and its implementing regulation at 45 CFR Part 158 requires health insurance issuers (issuers) offering group or individual health insurance coverage to submit annual reports to the Secretary of the Department of Health and Human Services concerning the issuers' premium revenue and expenses, as well as the issuers' medical loss ratios (MLRs) and any rebates they may owe to subscribers. MLRs are calculated separately for each market (individual, small group, and large group) within each State in which an issuer conducts business. In any State where an issuer does not meet the MLR standard specified by section 2718 for the applicable market, the issuer must provide rebates to enrollees.

Section 2718(d) of the PHS Act provides that the Secretary may adjust the MLR standard in the individual market if the Secretary determines it appropriate on account of the volatility of the individual market due to the establishment of Exchanges. The MLR December 1, 2010 interim final rule (75 FR 74864) set forth the framework for a State to request such an adjustment and the process and criteria for the Secretary to determine whether to grant a State's request. Subpart C of 45 CFR Part 158 specifies the information that the State must provide to support its request, and the criteria that HHS may consider in making a determination. In the HHS Notice of Benefit and Payment Parameters for 2019 final rule, HHS amended Subpart C to modify the data and narratives which a State must submit as part of the State's request for an adjustment to the MLR standard in its individual market. Under the amendments to Subpart C of 45 CFR Part 158, such State is required to submit information to the Secretary demonstrating that an adjustment to the 80 percent MLR standard will help stabilize the individual market in that State. Because the amendments modify circumstances in which an adjustment could be granted, the amendments modify the type of information that a State must submit. The amendments also streamline and reduce the overall amount of information that a State seeking an adjustment must submit to HHS. Most of the information requested is currently only available at the State level. HHS must obtain such key information in order to ascertain whether an adjustment to the MLR standard would have a reasonable likelihood of helping stabilize the individual market.

The following information collection is included in this request:

State Request for Adjustment to the MLR Standard for its Individual Market. Title 45 CFR §158.320 requires a State requesting an adjustment to its individual market MLR standard to submit information described below in an electronic format, and allows a State to submit additional pertinent information to support its application or request to submit alternative supporting information. Under the HHS Notice of Benefit and Payment Parameters for 2019 final rule amendments to 45 CFR §158.321, a State must submit summary information on issuers active in its individual market, including earned premium and incurred claims, number of enrollees, commissions expenses, and net underwriting gain for up to five types of coverage, as well as the issuer's risk-based capital level; and whether any issuers have notified the State that they intend to cease or begin offering individual

market coverage. In addition, a State must provide and explain its proposal as to the adjustment it seeks to the MLR standard (45 CFR §158.322) and the contact information of the person the Secretary may contact regarding the application (45 CFR §158.323). Section 158.340 specifies the manner in which information must be submitted. Section 158.346 provides an option for a State to submit a reconsideration request. Section 158.350 specifies the additional information a State must submit with a subsequent request.

The information collection for State requests for adjustment was previously approved by OMB Control Number 0938-1114. It was allowed to expire in 2014 because under the current regulation's standard and criteria for granting adjustments, it was expected that no States would request such adjustments after 2011, and in fact none have done so. However, due to the amendments to Subpart C of 45 CFR Part 158 adopted in the HHS Notice of Benefit and Payment Parameters for 2019 final rule, it is expected that States will again request adjustments to the individual market MLR standard. Therefore, HHS has sought to reinstate and modify the previously approved information collection to reflect the amendments to 45 CFR Part 158.

2. Purpose and Use of Information Collection

HHS will use the State application to determine whether an adjustment to the MLR standard in a State's individual market is warranted to help stabilize that market. HHS will make all of the information submitted by the State as part of its request available to the public (45 CFR 158.341).

3. Use of Improved Information Technology and Burden Reduction

Each respondent must submit all information supporting its request electronically. Pursuant to 45 CFR 158.340, the HHS email address to which respondents must submit the information is specified in HHS technical guidance, OCIO 2010 – 2A (Dec. 17, 2010), as well as on the HHS website at https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/state_mlr_adj_requests.html. HHS staff will analyze the information submitted and will communicate with respondents using email and telephone. In addition, as stated in the HHS Notice of Benefit and Payment Parameters for 2019 final rule, HHS has reduced burden by eliminating collection of some data elements and streamlining the requirements for other data elements.

4. Efforts to Identify Duplication and Use of Similar Information

There is no similar information collected related to State requests for adjustment to MLR standard. As stated in the HHS Notice of Benefit and Payment Parameters for 2019 final rule, HHS has eliminated collection of those data elements which are collected by HHS on the MLR Reporting Form approved under OMB control number 0938-1164.

5. Impact on Small Businesses or Other Small Entities

Not applicable.

6. Consequences of Collecting the Information Less Frequently

The application process is voluntary. It is expected that over time fewer States will apply for an adjustment to the individual market MLR standard and that such adjustments will no longer be warranted as the market stabilizes. Under 45 CFR §158.311, States may apply for an adjustment to the MLR standard for up to three years.

7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5

No special circumstances apply to this collection.

8. Comments in Response to the Federal Register Notice/Outside Consultation

CMS published the notice of the revised Request for Adjustment to the MLR Standard for a State's Individual Market PRA package in the Federal Register on November 2, 2017 (82 FR 51052). The 60-day comment period closed on January 1, 2018. CMS received one comment that directly related to this information collection package; the commenter agreed with the estimates for the revised information collection.

The 30-day Notice published in the Federal Register on April 17, 2018.

No additional outside consultation was sought.

9. Explanation of any Payment/Gift to Respondents

Respondents will not receive any payments or gifts as a condition of complying with this ICR.

10. Assurance of Confidentiality Provided to Respondents

Pursuant to 45 CFR §158.341, HHS does intend to make the collected information publicly available through its internet website. However, no individually identifiable personal health information will be collected and consequently cannot be disclosed.

11. Justification for Sensitive Questions

This ICR does not contain sensitive questions.

12. Estimates of Annualized Burden Hours (Total Hours and Wages)

HHS estimates that preparing a request for adjustment to the MLR standard will require a State on average 17.5 person-days of effort (approximately 140 burden hours divided by 8-hour work days). The time burden estimate is uncertain because some States may have better access to the required application information elements, while other States may have to seek some of the required information from health insurance issuers in their States, which could increase their burden. HHS estimates that approximately 22 States will submit requests. This estimate is based on past State requests and adjusted to account for the effect of the changes to Subpart C of 45 CFR Part 158.

A State that seeks an adjustment to its individual market MLR standard will prepare and submit one request. The preparation and submission of requests will involve gathering and analyzing data,

synthesizing information, and developing a proposal for an adjusted MLR standard, and is expected to require a mix of skills. The average hourly compensation, including fringe benefits and overhead expenses is \$75.90.³¹ As shown in Table 1 below, it is estimated that each State will, on average, incur a burden of approximately 140 hours (and an equivalent cost of approximately \$10,626). Previous burden estimates related to this ICR have been updated based on the latest available wage data and to reflect the changes to Subpart C of 45 CFR Part 158.

Table 1: Burden and Cost Estimates for State Requests for Adjustment to MLR Standard

| Form | Type of Respondent (occupation) | Number of Respondents | Average Number of Responses per Respondent | Estimated Burden Hours per Respondent | Wage per Hour (incl. fringe) | Burden Cost Per Respondent | Total Estimated Burden Hours |
|---|--|------------------------------|---|--|-------------------------------------|-----------------------------------|-------------------------------------|
| Request for adjustment to MLR standard (no specific form) | State (Commissioner) | 22 | 1 | 4 | \$116.90 | \$467.60 | 88 |
| | State (Lawyer) | 22 | 1 | 24 | \$89.74 | \$2,153.76 | 528 |
| | State (Financial manager) | 22 | 1 | 10 | \$91.66 | \$916.60 | 220 |
| | State (Actuary) | 22 | 1 | 6 | \$80.82 | \$484.92 | 132 |
| | State (Financial analyst) | 22 | 1 | 96 | \$68.78 | \$6,602.88 | 2,112 |
| | State (Total) | | 22 | 1 | 140 | \$75.90 | \$10,625.76 |

13. Estimates of other Total Annual Cost Burden to Respondents or Record Keepers/Capital Costs

The adjustment request process does not explicitly require the State to retain supporting documentation; however, we expect that the State would do so. We estimate that the retention of these documents would fall under normal State record retention practices and therefore would have a marginal annual cost to each respondent. This is included in the burden estimate.

³¹ Wage Estimate: to derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2016 National Industry-Specific Occupational Employment and Wage Estimates for State Government, excluding schools and hospitals (https://www.bls.gov/oes/current/naics4_999200.htm). The State Insurance Commissioner wage estimate was derived from compensation of state executive officers data collected by the Council of State Governments and compiled by Ballotpedia ([https://ballotpedia.org/Insurance_Commissioner_\(state_executive_office\)](https://ballotpedia.org/Insurance_Commissioner_(state_executive_office))) (last retrieved Aug 23, 2017)). In this regard, the wage data on this page includes the cost of fringe benefits and the adjusted hourly wage.

14. Annualized Cost to Federal Government

Table 2: Estimate of Cost to Federal Government

| Type Federal Employee Support | Total Burden Hours per Reviewer | Total Reviewers | Hourly Wage Rate (GS 14 equivalent) – (includes fringe) | Total Federal Government Costs |
|---|--|-----------------|---|--------------------------------|
| Review and analysis of State request for adjustment to MLR standard | 24 hours per State request (22 requests – 528 hours) | 1 | \$73.00 | \$38,544 |

Salaries are based on a 14 Grade/Step 1 in the Washington DC area and include benefits.

15. Explanation for Program Changes or Adjustments

In the HHS Notice of Benefit and Payment Parameters for 2019 final rule, HHS has reduced the burden on respondents by eliminating collection of some data elements that were included in the previously approved ICR and streamlining the requirements for other data elements. It is estimated that there will be a net reduction in total burden from 3,700 to 3,080.

16. Plans for Tabulation and Publication and Project Time Schedule

HHS will make publicly available all State request for adjustment to the MLR standard information it receives, and will publish HHS’ determination with respect to each State request, on a rolling basis.

17. Reason(s) Display of OMB Expiration Date is Inappropriate

There are no instruments associated with this collection.