**Supporting Statement**
**Medical Loss Ratio Annual Reports, MLR Notices, and Recordkeeping Requirements**
(CMS-10418 - OMB Control Number - 0938 -1164)

## A. Justification

### 1. Circumstances Making the Collection of Information Necessary

Section 2718 of the Public Health Services Act (PHS Act) requires a health insurance issuer (issuer) offering group or individual health insurance coverage to submit a report to the Secretary of HHS concerning the amount the issuer spends each year on claims, quality improvement expenses, non-claims costs, Federal and State taxes, licensing and regulatory fees, earned premium, and beginning with the 2014 reporting year, the amounts related to the transitional reinsurance, risk corridors, and risk adjustment programs established under sections 1341, 1342 and 1343 respectively of the Affordable Care Act. An issuer must provide a rebate to policyholders if the amount it spends in a reporting year on certain costs compared to its premium revenue (excluding Federal and States taxes and licensing and regulatory fees) is below a certain ratio, referred to as the medical loss ratio (MLR). Specifically, section 2718(b) requires an issuer to provide a rebate to each of its policyholders if the MLR for the respective reporting year is less than 85 percent in the large group market or less than 80 percent in the small group or individual market. The implementing regulations for this provision are located in Part 158 to Title 45 of the Code of Federal Regulations. Under Section 1342 of the Patient Protection and Affordable Care Act, issuers of qualified health plans (QHPs) must participate in the risk corridors program and pay charges to or receive payments from HHS based on the ratio of the issuer's allowable costs to the target amount. The implementing regulation for this provision is located in 45 CFR Part 153. For benefit years 2014 through 2016, a QHP issuer is required to annually submit data to HHS that includes information on the issuer's allowable costs, allowable administrative costs, taxes and premiums.

In order to provide states and issuers additional flexibility to support continuity of coverage for enrollees who may struggle to pay premiums because of illness or loss of income resulting from the COVID-19 public health emergency, the Centers for Medicare & Medicaid Services (CMS) has established a temporary enforcement safe harbor under which issuers may choose to prepay enrollees a portion or all of the estimated MLR rebate for 2019, and may modify the standard language of the rebate notices required under 45 C.F.R. § 158.250.

Under this safe harbor, issuers that choose to send a portion of the rebate to enrollees early must send any remaining rebate amounts to enrollees by the regulatory deadlines, which may result in such issuers incurring the cost of sending notices and rebate checks (if sent via U.S. mail) twice. Issuers that choose to send rebates to enrollees early may substantially or entirely avoid additional burden by sending notices and rebates electronically or by sending no less than the total required rebate amount. We anticipate that fewer than ten issuers will choose this option. Of the four issuers that have expressed an interest in sending rebates early, one issuer indicated that it intends to send no less than the total required rebate amount, and is thus expected to avoid additional burden. Under the safe harbor, issuers that choose to send a portion of the rebate to enrollees early must also disclose the combined total amount of such prepayments in the issuer's state and market to CMS. We assume that the burden of this disclosure and related recordkeeping is negligible.

We are proposing non-substantive changes in this information collection to revise the average burden of sending the notices and rebates to account for the potential additional burden that may be incurred by issuers that choose to send a portion of estimated rebates to enrollees early.

The following information collections are included in this request:

**Annual Report.** Under 45 CFR §§158.110 and 153.530, issuers are required to submit an annual data report to the Secretary by July 31 of the year following the end of an MLR reporting / risk corridors benefit year. Sections 158.120 through 158.260 and 153.530 set out the data requirements for this report. In addition, under 45 CFR §158.260, each issuer must also submit a report to the Secretary concerning the rebates provided to and on behalf of enrollees. Section 158.260 requires that this report be submitted with the annual report under §158.110. The annual reporting form for the 2016 reporting year was approved by OMB Control Number 0938-1164 and is not being revised at this time.

QHP issuers are also required to submit a Risk Corridors Plan-Level Data Form for each year of the temporary risk corridors program. The Risk Corridors Plan-Level Data Form will be used to calculate risk corridors payment and charge amounts. Each company with at least one health insurance issuer that offered a certified QHP through the Federal or State-based Marketplace during the 2016 benefit year will submit The Risk Corridors Plan-Level Data Form with plan-specific premium data for each of its QHP issuers in the individual or small group markets. This data submission is authorized by 45 CFR Part 153.

**Notices.** As specified in 45 CFR §158.240(a), an issuer must provide rebates to enrollees and policyholders on behalf of enrollees when the issuer's MLR does not meet the applicable minimum MLR standard. Section 158.250 requires an issuer to provide information in the form of a rebate notice to policyholders who are owed a rebate and subscribers whose policyholders are owed a rebate. As also provided in 45 CFR §158.250, CMS has developed a standard form for the rebate notice that each issuer must send by September 30 of the year following the reporting year for which policyholders are entitled to a rebate. The standard rebate notices were already approved by OMB Control Number 0938-1164 and are not being revised at this time. Two optional revised model rebate notices are being added to assist issuers that choose to send a portion or all of the estimated 2019 rebates to enrollees early and to reduce the issuer burden of developing modified notices. The burden estimate has been updated to reflect the additional burden that issuers may choose to incur under the CMS temporary policy of relaxed enforcement that allows issuers to split the payment of rebates into two installments in 2020.

**Recordkeeping.** The MLR regulations contain two recordkeeping requirements. Section 158.502 requires an issuer to maintain all documents and other evidence necessary to enable CMS to verify that the data submitted by the issuer is in compliance with 45 CFR Part 158, including all documents, records, and other evidence used to calculate the MLR and any rebates, and that any rebates owing in accordance with 45 CFR Part 158 are provided. Section 158.501 requires an issuer to preserve and maintain all such documents, records, and other evidence for the MLR reporting year as well as six prior years unless a longer period is required under §158.501. This information collection was also approved by OMB Control Number 0938-1164 and is not being revised at this

time.

Section §153.520(e) requires a QHP issuer to maintain documents and records sufficient to enable the evaluation of the issuer's compliance with applicable risk corridors standards, for each benefit year for at least 10 years, and must make those documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity, for purposes of verification, investigation, audit or other review. The burden associated with this recordkeeping requirement is already accounted for in the Supporting Statement approved under OMB 0938-1155.

## 2. Purpose and Use of Information Collection

The data collection of annual reports provided by an issuer for each State's individual, small group, and large group markets will be used by CMS to ensure that consumers are receiving value for their premium dollar by calculating each issuer's MLR and any rebate payments due for the respective MLR reporting year, as well as verifying the provision of any rebates and rebate notices. CMS will also use the annual reports data collection to ensure that each QHP issuer in the individual or small groups market either pays or receives accurate risk corridors amounts.

The standardized notices will be used to ensure that consumers are receiving information about the rebate they will be receiving, how their issuer is using health care premium dollars and about the value they are receiving for their premium dollar. The notices will help provide greater transparency to consumers. The recordkeeping requirements will be used by CMS to determine issuers' compliance with the MLR and risk corridors requirements, including compliance with how issuers' experience is to be reported, how their MLR and any rebates owed are to be calculated, distribution of rebates and provision of rebate notices.

## 3. Use of Improved Information Technology and Burden Reduction

Each issuer will submit its annual report electronically to the Secretary for each respective State and market in which it conducts business. (OMB Control Number 0938-1086**.)** Information will be collected electronically through CMS' HIOS computer system. This will require registration of the issuer, providing issuer information for the purpose of the collection, and will be the same process as the one used for the 2015 reporting year. Issuers who have already registered with our MLR module within the HIOS system will not need to register again.

## 4. Efforts to Identify Duplication and Use of Similar Information

There is no similar information collected related to MLR. In addition, as stated in the HHS Notice of Benefit and Payment Parameters for 2015 final rule (79 FR 13744 (March 11, 2014)), CMS is leveraging the similarity of the data elements between the two programs by collecting the risk corridors data on the same form and at the same time as the MLR data. As indicated in the Supporting Statement approved under OMB 0913-1155, CMS modified the MLR Reporting Form approved under OMB control number 0938-1164 to add reporting elements (for example, QHP-specific premium amounts) that are required under the risk corridors data submission requirements under §153.530.

## 5. Impact on Small Businesses or Other Small Entities

As stated in the Regulatory Impact Analysis of OCIIO-9998-IFC (75 FR 74864 (December 1, 2010)), CMS does not believe that the required submission of annual reports to the Secretary will have a significant impact on a substantial number of small entities. CMS estimates that of the 545 issuers who must report annually to the Secretary in compliance with OCIIO-9998-IFC, there are approximately 97 potentially small entities, or roughly 18 percent, who must comply with the reporting mandate. This estimate may overstate the actual number of small health insurance issuers that would be affected, since it does not include receipts from these companies' other lines of business and since almost 75 percent of these small companies belong to larger holding groups.

## 6. Consequences of Collecting the Information Less Frequently

Section 2718 of the PHS Act and section 1342 of the Patient Protection and Affordable Care Act require reports to be submitted annually. CMS will use the information reported to assess whether each issuer is in fact providing policyholders with health care value in return for their premium dollars and to ensure that the risk corridors amounts transferred between QHP issuers and CMS are accurate.

Regarding notices, section 2718 of the PHS Act requires issuers to provide rebates annually if they do not meet the applicable MLR standard. Since rebates are provided annually, notices of rebates are required to be provided to policyholders annually in order to inform policyholders about any rebates owing. Since some issuers may choose to provide rebates in 2020 in two installments, and their enrollees would need to understand why they are receiving partial rebate amounts on a different timeframe and potentially in a different manner, issuers that choose to utilize this option must provide the notices of rebates with each rebate installment.

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

No special circumstances apply to these collections.

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

Not applicable since we are requesting approval of a non-substantive change.

## 9. Explanation of any Payment/Gift to Respondents

Respondents will not receive any payments or gifts as a condition of complying with these ICRs.

## 10. Assurance of Confidentiality Provided to Respondents

As required by section 2718(a) of the PHS Act, CMS does intend to publish issuers' annual reports on its internet website. However, no individually identifiable personal health information will be collected and consequently cannot be disclosed. Plan-specific information collected for the risk corridors program (Risk Corridors Plan-Level Data Form), does not include personal health information and will not be published on the CMS website.

## 11. Justification for Sensitive Questions

These ICRs do not contain sensitive questions.

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

The burden estimates associated with the annual report, rebate notice, rebate disbursements, risk corridors data, and recordkeeping requirements are discussed below. We have updated the burden estimates to include the estimate that some issuers will choose to provide rebate notices and rebates twice in 2020 under the CMS temporary policy of relaxed enforcement that allows issuers to split the payment of rebates into two installments in 2020. We estimate that each annual filing and rebate disbursement cycle will require on average 46.2 person-days of effort per issuer (approximately 370 burden hours divided by 8-hour work days).

### Annual MLR Report

An issuer is required to submit an annual report to the Secretary for each State and market segment in which it issues health insurance coverage. As described in the regulatory impact analysis (RIA) of OCIIO-9998-IFC, the preparation and submission of reports is expected to require a mix of skills. We also estimate that issuers will use a mixture of professional staff, accounting staff, and clerical staff to prepare, review, and issue rebate notices and rebate checks or premium credits, and to perform recordkeeping activities and to upload the report to the HIOS system. The average hourly compensation, including fringe benefits and overhead expenses is $55.64 for ongoing annual reporting.[3] Previous burden estimates related to these requirements are shown in Table 1 and are not being updated at this time.

As set out in 45 CFR §§158.110, 158.260, and 153.530, the annual report to the Secretary is comprised of several parts: data concerning the amount the premium dollars the issuer spends each year on claims, quality improvement expenses, non-claims costs, Federal and State taxes, licensing and regulatory fees, and the transitional reinsurance, risk adjustment, and risk corridors amounts based upon the relevant MLR reporting year; the correlating risk corridors calculation; the correlating MLR and rebate (if any) calculation; and data regarding disbursement of rebates based on the prior MLR reporting year.

[31] Wage Estimate: to derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2015 National Occupational Employment and Wage Estimates for all salary estimates (http://www.bls.gov/oes/current/oes_nat.htm). In this regard, the wage data on the following pages includes the cost of fringe benefits and the adjusted hourly wage.

**Table 1: Burden and Cost Estimates for Annual Report**

| Form | Type of Respondent | Number of Respondents | Average Number of Reports per Respondent | Frequency | Estimated Burden Hours per Respondent | Wage per Hour (incl. fringe) | Burden Cost Per Respondent | Total Estimated Burden Hours |
|---|---|---|---|---|---|---|---|---|
| Annual Report for issuers not offering student health insurance coverage | Private Company | 492 | 4.7 | 1 | 296.01 | $55.64 | $16,471 | 145,637 |
| Annual Report for issuers offering student health insurance coverage in addition to other coverage | Private Company | 44 | 4.7 | 1 | 301.01 | $55.64 | $16,749 | 13,244 |
| Annual Report for issuers offering student health insurance coverage only | Private Company | 9 | 1 | 1 | 10 | $55.64 | $556 | 90 |
| Annual Risk Corridors Plan Level Data Form for QHP issuers | Private Company | 284 | 1.35 | 1 | 8.1 | $55.64 | $449 | 2,292 |

**Notice of Rebate and disbursement of rebate checks**

The regulation also requires each issuer that does not meet or exceed the minimum MLR standard to provide rebates to its policyholders as well as notice of such rebates to policyholders and to subscribers of group policyholders.

Previous burden estimates related to these requirements estimated that 106 issuers in the individual and group markets will owe rebates. Updating the estimates for the inclusion of issuers that are expected to provide rebate notices twice in 2020 under the CMS temporary policy of relaxed enforcement that allows issuers to split the payment of rebates into two installments in 2020, each issuer will provide rebate notices to approximately 28,613 policyholders and subscribers on average (Table 2). We estimate that approximately 12,243 notices will be sent per issuer electronically and approximately 16,371 notices will be sent per issuer by first class U.S. mail. We assume that the cost of sending notices electronically is negligible. The cost for sending notices via U.S. mail for each issuer is estimated to be roughly $9,577 ($35.03 per hour x 273.39 burden hours) in labor costs and approximately $8,840 (16,371 notices x $0.54 mailing and supply costs per notice) in mailing costs, for a total annual cost of approximately $18,417 (Table 2).

It is estimated that approximately 41 issuers in the individual market will disburse rebates in some form to subscribers by September 30 of the year following the end of the MLR reporting year, and that three of these issuers will disburse rebates twice during 2020, whether by premium credit, check, or refund via credit or debit card (Table 2). Assuming that the issuers will disburse 50% of the rebates in the form of an actual check, we project that each of these 41 issuers will issue approximately 11,516 checks on average. Each issuer is estimated to expend approximately $13,053 in labor costs and an additional $576 in processing costs, for a total ongoing cost of approximately $13,629 a year (Table 2). The remaining rebates will be issued through premium credit or refunds via credit or debit card. Costs of paying rebates through one-time electronic reimbursement are expected to be negligible. It is estimated that approximately 74 issuers in the group market (including some of the issuers that also owe rebates in the individual market) will provide rebates to policyholders for disbursement to subscribers. We expect that the rebates to policyholders will be issued electronically and the related costs will be negligible.

**Table 2: Burden and Cost Estimates for Notice of Rebates and Disbursement of Checks**

| Type of Respondent and Forms | Number of Respondents | Average Number of Notices or Checks per Respondent | Average Mailing and Supplies Cost Per Notice or Check | Estimated Burden Hours per Rebate Cycle | Wage per Hour (incl. fringe) | Total Estimated Burden Cost for Notices or Checks Per Respondent | Total Estimated Burden Hours (Ongoing) |
|---|---|---|---|---|---|---|---|
| Private Company for Notice of rebates to Subscribers and Policyholders | 106 | 28,613 | $0.54 | 273.39 | $35.03 | $18,417 | 29,594 |
| Private Company for Disbursement of checks | 41 | 11,516 | $0.05 | 287.90 | $45.34 | $13,629 | 11,824 |

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

### Recordkeeping Requirements

Each issuer is also obligated to maintain all documents, records and other evidence that supports the data submitted by the issuer in its annual report(s) to the Secretary. Previous burden estimates related to these requirements are shown in Table 3 and are not being updated at this time.

**Table 3: Burden and Cost Estimates for Retention of Records**

| Forms (if necessary) | Type of Respondent | Number of Respondents | Average Number per Respondent | Frequency | Estimated Burden Hours per Respondent (Ongoing) | Total Estimated Burden Hours (Ongoing) | Wage per Hour (including fringe) | Burden Cost for Annual Retention of Records Per Respondent |
|---|---|---|---|---|---|---|---|---|
| Retention of Records | Private Company | 545 | 4.7 | 1 | 0.28 | 152.76 | $51.88 | $14.54 |

## 14. Annualized Cost to Federal Government

Previous burden estimates related to the cost to Federal government are shown in Table 4 and are not being updated at this time.

### Table 4: 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 |
|---|---|---|---|---|
| Data Analysis | 3 hours per data submission for each Annual filing (545 filers once per year – 1,635 hours)[4] | 1 | $73.00 | $119,363 |

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

## 15. Explanation for Program Changes or Adjustments

We are proposing non-substantive changes to the ICRs to revise the average burden of sending the notices and rebates to account for the potential additional burden that may be incurred by issuers that choose to split the payment of rebates into two installments in 2020 under the CMS temporary policy of relaxed enforcement, and may therefore need to send rebates and notices to enrollees twice instead of once in 2020. It is estimated that there will be an increase in total burden from 200,597 to 201,422.

## 16. Plans for Tabulation and Publication and Project Time Schedule

Under the CMS temporary policy of relaxed enforcement, the annual report of MLR data for the 2019 reporting year is due to the Secretary by August 17, 2020.

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

Not applicable.

[4] A data submission includes filings for all States by a single issuer.