



March 25, 2016

Comments Submitted Electronically at: <http://www.regulations.gov>

Center for Medicare and Medicaid Services
Office of Strategic Operations and Regulatory Affairs,
Division of Regulations Development,
Room C4-26-05,
7500 Security Boulevard, Baltimore,
Maryland 21244-1850.

Attention: OMB Control Number: 0938-1164

Re: AHIP Comments on the Draft 2015 Instructions and Forms in the 2015 MLR
and Rebate Calculation Report and Risk Corridor Plan-level Data Report:
PRA Form Number: CMS-10418

Dear Ms. Whitefield (CMS/CCIIO MLR Division),

America's Health Insurance Plans (AHIP) appreciates the opportunity to provide comments on the materials in the PRA Information Collection Request published in the Federal Register February 19, 2016 by the Center for Medicare and Medicaid Services (CMS).

We include a number of detailed comments and recommendations in the attached document, based on discussions with our member plan experts. We highlight some recommendations here related to actions that CMS can take to provide health insurers with information that is critical to their completing accurate and timely MLR and RC reporting and rebate calculations for consumers.

- **Insolvencies and Risk Adjustment:** We highlight a concern related to potential changes to risk adjustment amounts in the event of insolvencies of insurers. We recommend 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.



- **Timing of any adjustments to the June 30th risk adjustment/reinsurance report amounts:** We recommend that any adjustments to amounts provided in the summary Report of June 30th be completed and issued to insurers by no later than July 15th. The narrow window for insurers to submit their MLR and RC reports is July 1 to July 31. Truncating that by two weeks, if the insurers must re-do the calculations, is an even narrower window. We ask that any adjustments after June 30 be provided by mid-July to allow insurers to meet the reporting and rebate calculation requirements by July 31.
- **Instructions addressing the MLR Timing Impact of Guaranty Fund Assessments:** We note that the recent number of insolvencies have had a significant impact on insurers in states with Guaranty Funds that include health insurers. The timing of guaranty fund assessments to address such insolvencies can have a perverse impact on MLR, thus we recommend a process of reporting them that is MLR neutral.

We welcome further discussion on these comments and appreciate your consideration of these recommendations.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Colleen M. (Candy) Gallaher", with a long, sweeping horizontal line extending to the right.

Colleen M. (Candy) Gallaher
Senior Vice President - State Policy
cgallaher@ahip.org

Attachment: *AHIP comments on MLR and Rebate Calculation and Risk Corridor Plan-Level Data Reporting Form Instructions*

AHIP Comments on the 2015 MLR and Rebate Calculation Form Instructions

(March 25, 2016)

Thank you for the opportunity to provide these comments on the [Materials Released](#) in the PRA Notice Form Number CMS–10418 on the Medical Loss Ratio and Rebate Calculation and the RC Corridor Instructions. We provide detailed comments and recommendations divided into three sections: **MLR and Rebate Calculation Form Instructions**, **MLR and Rebate Calculation Form** (page 7), and **RC Plan Level Data Form Instructions** (Page 8). We've also highlighted **number** or formula changes, and **bolded our recommendations**:

- The General Submission Process in the MLR Instructions (on page 5) clarifies that attestation occurs only *after* uploading both MLR and RC data (if applicable). However the RC Plan-Level Data Form Instructions (on page 4) indicate "Risk Corridor zip file uploads will be allowed after the full MLR attestation has been completed." **We recommend that conflicting sentence in the RC Form Instructions be deleted.**
- **Impact of guaranty fund assessments on MLR**; The current instructions (Part 1 page 17 Lines 3.2a and 3.2b) do not allow for matching of non-risk revenues and expenses resulting from the insolvency of another insurer.

The current instructions do not allow for the matching of costs (accrual or payments of guaranty fund assessments) with offsetting allowances (reduction in premium or state income tax payments or the collection of premium surcharges) that have arisen from the insolvency of other health insurers or similar situations that may occur in the future. Insured enrollees are protected from the failure of their insurer by guaranty fund associations in some states that extend guaranty fund protection to health insurance.

The payment of claims of the insolvent insurer by the guaranty fund is made possible by assessments against solvent insurers. In most states, these assessments may be recovered by reducing premium taxes due after the assessments, or by collection of premium surcharges on future business. Statutory accounting requires the accrual of amounts prior to actual assessments and does not allow for an offsetting accrual of a receivable for premium or state income tax credits or surcharges until a later accounting period.

Since these situations often take several years to complete, it is likely that the related recovery of the assessment will extend beyond the three-year period of the MLR calculations. Since payment of the assessments typically occurs ahead of recoveries, the lack of an instruction to match these payments and offsets will reduce MLR values in one year and then increase them in a later year.

We recommend that the instructions for lines 3.2a and 3.2b specifically allow for the matching of guaranty fund assessments with offsetting values in accordance with each state's provisions for such offsets. No changes to the templates are required.

The recommended revisions to fairly account for the impact of guaranty fund assessments on an insurer's MLR are in redline, as follows:

- In Part 1 Page 17
 - 3.2a – State income, excise, business, and other taxes, allocated to the respective lines of business reported, that may be excluded from earned premium under 45 CFR §158.162(b)(1)

Include:

- Any industry wide (or subset) assessments (other than surcharges on specific claims) paid to the State directly, or premium subsidies that are designed to cover the costs of providing indigent care or other access to health care throughout the State, or market stabilization redistributions, or cost transfers for the purpose of rate subsidies, not directly tied to claims, and that are authorized by State law
- Guaranty fund assessments – unless such assessments will be offset in future years through reductions in premium or state income taxes or premium surcharges applied at a state's direction in a future year in which case the guaranty fund assessment is recognized in the year(s) of offset.
- Assessments of State industrial boards or other boards for operating expenses or for benefits to sick employed persons in connection with disability benefit laws or similar taxes levied by States
- Advertising required by law, regulation or ruling, except advertising associated with investments
- State income, excise, and business taxes other than premium taxes

Exclude: Fines, penalties, and fees for examinations by any State departments.

- 3.2b – State premium taxes
 Include state premium taxes or State taxes based on policy reserves if in lieu of premium taxes related to the respective lines of business.
Include guaranty fund assessments paid in prior years but deferred per 3.2a and intended to be offset by reduced premium or state income taxes or premium surcharges reported in the current year.

Other changes we recommend are:

- In Part 1, Page 18
 - Line 3.3a -Federal Transitional Reinsurance Programs Contributions are broken out separately here. This places the transitional reinsurance contributions under "Regulatory Authority Licenses and Fees" in the federal MLR Report. This differs from the NAIC SHCE Instructions, which include federal transitional reinsurance program fees under "Federal Taxes and Federal Assessments". Having to report information in two different ways with no clear need to make such differentiation creates an additional and unnecessary administrative burden on plans that should be eliminated.

For that reason we ask that 3.3 (a) "federal transitional Reinsurance programs" be removed from 3.3 and permitted instead under 3.1d - Other Federal Taxes and assessments.

- In Part 1, Page19
 - Line 3.3b (at the top of the page) the first bullet newly includes "risk adjustment user fees" under "other federal and state authority licenses and fees". This differs from the NAIC SHCE Instructions, which include risk adjustment user fees under "Federal Taxes and Federal Assessments". Having to report information in two different ways with no clear need to make such differentiation creates an additional and unnecessary administrative burden on plans that should be eliminated.

For that reason we ask that "risk adjustment user fees" be removed from 3.3b and permitted instead under 3.1d - Other Federal Taxes and assessments. We recommend:

- Include: Federal taxes and assessments, including risk adjustment user fees (other than income taxes) allocated to the respective lines of business.

- Part 1, Page 25
 - Related to Line 5.6 - the "Exclude" has some formatting errors, where the next Line 5.7 is incorrectly linked to the "exclude" information

We recommend the following formatting correction:

Exclude:

Any elements already reported on Lines 5.1,5.2,5.3,5.4, and 5.5.

Line 5.7 - Total community benefit expenditures (informational only; include amounts reported in Lines 4.6 and 5.6).

- Part 1, Page29

Line 1.5 - Reserves for experience rating refunds. The draft language newly adds "Premium stabilization reserves" in the "Exclude" list of items. This is a concern, since these serve the same function and act essentially the same as the experience rating refund reserves, plus reserves for state premium refunds.

We recommend that "Premium stabilization reserves" be added to the "Include" list, which is also consistent with the SHCE instructions, and removed from the "Exclude" list.

Include: Reserves for experience rating refunds, plus reserves for State premium refunds, and premium stabilization reserves

Exclude: Reserves for Federal and State MLR rebates Premium stabilization reserves and risk corridors reserves or accruals

- Part 2, page 34
 - Line 2.9 Reserves for experience rating refunds - Comments same as above.

We recommend that "Premium stabilization reserves " be added to the "Include" list, and removed from the "Exclude" list.

Include: Reserves for experience rating refunds, plus reserves for State premium refunds, and premium stabilization reserves

Exclude: Reserves for Federal and State MLR rebates ~~Premium stabilization reserves~~ and risk corridors reserves or accruals

- Part 2, Page 36
 - Line 2.18 - Advance Payments of Cost-Sharing Reductions.
The title of this line (advanced payments) does not match the data collected, which are reconciled cost-sharing reductions received. And the formula description (reconciled amounts = CSR value – advanced payments) also refers to reconciled amounts .

We recommend that Line 2.18 be renamed to “Reconciled Payments of Cost-Sharing Reductions”

- Part 3, Page 39
 - Line 1.4 As noted above, the title of this line (advanced payments) does not match the description (reconciled amounts = CSR value – advanced payments). **We recommend this line be renamed to “Reconciled Payments of Cost-Sharing Reductions**
- Part 3, Page 39. Currently in Line 1.4 the 2014 reconciled amount is input in the PY1 column; however this column is not included in the 2015 Risk Corridor calculation (RC).

We recommend the change between the 2014 reported number and the 2014 actual number should also be included in the 2015 RC calculation.

Our rationale: Currently, prior year CSR is not adjusted in risk corridor line 3.1. We want to include the prior year reported CSR in line 7.2a and the reconciled/adjusted CSR in line 7.2b. Including the CSR difference in line 7.2 will flow through the risk corridor calculation.

Below is the illustration for lines 7.2a and 7.2b:

- Line 7.2a would be 2014 MLR Form, Part 1, Lines 2.1 + 2.11 – Part 3 Line 1.4, Column [RC] 3/31

- Line 7.2b would be Part 1, Line 2.1 + 2.11, Column [RC] 3/31 of the 2014 MLR Form, restated as of 3/31/2016, **- 2015 MLR Form, Part 3, Line 1.4 from PY1 Column.**

Restate all applicable elements of adjusted incurred claims, including reserves, the allowable fraud reduction expenses and cost-sharing reductions, in accordance with the Filing Instructions.

- Part 3, Page 39
 - Line 1.5 - Federal Transitional Reinsurance Program Payments.
Both Lines 1.5 and 1.6 refer to *"Restate amounts to reflect any changes or updates communicated by HHS after June 30, 2015."*

In some cases that will be clear. However there are concerns that not all information has been communicated to insurers yet by HHS. There are still states with appeals, and it is not clear if CMS will collect 100% of the Risk Adjustment invoices to pay insurers.

Thus we recommend that there should be an allowance if an insurer does not receive the full amounts CMS reported by CMS after June 30, 2015.

We also recommend there should be guidance on how to handle scenarios in states still under appeal.

- Part 3, Page 40
 - Line 1.6 – Net Federal Risk Adjustment Program Payments or Charges
 - PY1 Column: Asks to “restate amounts to reflect any changes or updates communicated by HHS after June 30, 2015”. **See recommendations above.**

Examples of existing scenarios:

- On July 23, 2015, an insurer received notification from CMS instructing the plan to report an adjusted amount, reflecting an estimate reduced risk adjustment payment on the 2014 MLR/RC filing.
- Another insurer has already collected more than the amounts reported on the 2014 MLR/RC filing.

Should plans be reporting the actual amounts collected or continue to report the amounts provided by CMS in July 2015 or later?

- Currently the 2014 risk adjustment is input in the PY1 column; however this column is not included in the 2015 Risk Corridor calculation (RC). **We recommend the change between 2014 amounts provided by CMS as of 6/30/2015 and the 2014 payments actually received should be included in the 2015 RC calculation. See our comments on Line 1.4 above.**

We recommend the timing of any CMS revisions to the reinsurance and risk adjustment amounts sent in the 6/30 reports to insurers should be issued by no later than a deadline of 7/15/16. Insurers received changes to the 6/30 report right up to and even after the 7/31 MLR filing deadline. Insurers were only permitted by CMS to defer revisions their reports if the impact was less than \$25. It was very difficult for insurers to make the changes to address those revised amounts when they were received so late. We therefore strongly recommend that CMS issue any changes to the reinsurance and risk adjustments to issuers no later than by 7/15/16, in order for the insurers to be able to complete their reports in the remaining short window for reporting, where they would have to recalculation, complete quality reviews and the required attestations by the 7/31 deadline.

If CMS is unable to meet the 7/15 deadline for providing notice of any changes to the previously reported (6/30) amounts, then we recommend that affected insurers be given an extension on their reporting window equal to the time of any delayed adjustments from CMS beyond 7/15.

- Part 3, Page 40
 - Line 1.7 - Federal Risk Corridors Program Payments or Charges. The Draft instructions include formulas for the PY1 Charges and Payments.

The Payments formula includes a divisor from the 2014 RC Plan Level Data form - Tab 3, **Line 9**. The divisor should more appropriately be from **Line 6** of the RC form - which is the "risk corridors payment expected from HHS or payable to HHS. This is amount that the 12.6% factor was applied to.

We recommend the formula for the Payments PY1 Column should be stated as:

Payments: (2014 MLR Form, Part 2, Line 1.11, Columns 3/31 + Deferred PY1 - Deferred CY) x (Risk Corridors payments for the 2014 benefit year received from HHS as of the filing date of the 2015 MLR form) / (2014 Risk Corridors Plan -Level Data Form, Tab 3, Line 6)

- Part 3, Pages 40 - 42
 - Lines 1.5, 1.6 and 1.7 requires updating values for 2014 from the 2014 MLR Form to reflect information received after 6/30/2015.
 - These updated values are used to reduce the MLR Numerator in Line 1.8.
 - These updated values are **not** used in the offsetting adjustment to the MLR Denominator in Line 2.1. Instead, the instructions require the use of values from the 2014 MLR Form for that CY.

We recommend that the two adjustments be the same values by changing the source for the values in Line 2.1.

Line 2.1 PY1 Column – 2014 MLR Form, (Part 1, Lines 1.1 + 1.2 + 1.3, Columns 3/31 + Deferred PY1 – Deferred CY) – 2015 MLR Form (Part 3, Lines 1.5 + 1.6 + 1.7, Column PY €¥)

- Part 3, Page 44
 - Line 3.1 - Allowable Costs now adds +7.2 (the risk corridor claim liabilities/reserves true up). But it fails to back it out of Line 3.3a - Earned Profit, which applies only to CY 2015.

We recommend a change to correct that, by inserting +7.2 in Line 3.3a. It would read:

3.3a - Earned profit: Lines 2.1-3.1-2.2-3.2 +7.2

- Part 3, Page 48
 - Line 6.1 In the MLR Rebate Calculation MLR Standard the references to the 2014 MLR Form in PY1 Column are incorrect. The information is found in Part 3 Line 6.1, not in Line 4, Line 5.1.

We recommend the PY1 instructions be changed to:

PY1 Column - 2014 MLR Form, Part 4 3, Line ~~5.1~~ 6.1, Total Column

Comments on the 2015 MLR Reporting Template

- Part 1, Column 11 titled " Health Insurance Large Group Total as of 12/31/16" shows the date of 12/31/16 but should be 12/31/15

Question on how to report something not addressed in the instructions nor in the reporting template: There does not appear to be a clear location to report a State Reinsurance program. There are places to enter the Federal Transitional Reinsurance receipts, but the instructions are silent with regard to state programs. (We refer to Oregon's wrap around transitional reinsurance program here.)

We ask if insurers should report state reinsurance in the federal transitional reinsurance lines in the MLR.

Comments on the 2015 Risk Corridor Plan-Level Data Form Instructions

Data validation: Insurers will be carefully completing the RC plan-level data form, informed by their experience in providing the data with last year's report. We note that the process of data validation that occurred last year *after* insurers had completed and filed their MLR and RC reports was a very time consuming and frustrating administrative undertaking, with an extremely low threshold tolerance of 0.25% of data variance.

We thus recommend that this year no such post-filing data validation occur so close to the MLR rebate payment due date. In the event that CMS performs later audits, we propose 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. We also recommend that any findings be adjusted in the subsequent year's MLR and RC filings.

- In the third bullet (on page 4) of the General Instructions of the RC Form Instructions **this sentence should 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 may have used the 2014 Draft Instructions as the base when updating the 2015 Draft, instead of the 2014 Final Instructions. There are a number of items that were changed from the Draft 2014 in the Final 2014 instructions - but which have now appear again in the 2015 Draft. **We are concerned with these changes:**
 - **References to "billable premium".** 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.)

We recommend a clarification that CMS is expecting earned premium on the Risk Corridor Plan Level Form.

We recommend 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.

The definition of "premium earned" has been removed from the General Instructions on page 3, and instead the definition of "billable premium" is 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."

"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."

- **In Appendix A: Page 16 the row for Table 4 Column N. has accidentally 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”.
- Appendix A: Page 17
At Tab 3, “Risk Corridors Payment and Charge Calculation”, Line 8 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.

We recommend these changes:

- If Line 8 is at least 108%: $80\% \times (\text{Line 2} - 108\% \times \text{Line } 7) + 2.5\% \times \text{Line 7}$.
- If Line 8 is at least 103% but less than 108%: $50\% \times (\text{Line 2} - 103\% \times \text{Line } 7)$.
- If Line 8 is at least 97% but less than 103%: zero (0)
- If Line 8 is at least 92% but less than 97%: $50\% \times (\text{Line 2} - 97\% \times \text{Line 7})$.
- If Line 8 is less than 92%: $80\% \times (\text{Line 2} - 92\% \times \text{Line } 7) - 2.5\% \times \text{Line 7}$.