



**BlueCross BlueShield
Association**

An Association of Independent
Blue Cross and Blue Shield Plans

April 19, 2016

Sent Electronically

James Mayhew
Acting Director, Oversight Group
Center for Consumer Information and Insurance Oversight
Centers for Medicare and Medicaid
US Department of Health & Human Services
200 Independence Ave SW
Washington, DC 20201-0004

Submitted via the Federal Regulations Web Portal, <http://www.regulations.gov>

RE: Paperwork Reduction Act (PRA) package on the Medical Loss Ratio Annual Reports, MLR Notices, and Recordkeeping Requirements (CMS-10418 - OMB Control Number - 0938 -1164).

Dear Mr. Mayhew:

The Blue Cross and Blue Shield Association ("BCBSA") appreciates the opportunity to provide comments in response to the Centers for Medicare and Medicaid Services' ("CMS") Paperwork Reduction Act (PRA) package on the Medical Loss Ratio Annual Reports, MLR Notices, and Recordkeeping Requirements (CMS-10418 - OMB Control Number - 0938 -1164).

BCBSA is a national federation of 36 independent, community-based, and locally operated Blue Cross and Blue Shield Plans ("Plans") that collectively provide healthcare coverage for nearly 105 million – one in three – Americans. Plans offer coverage in every market and every zip code in America. Plans also partner with the government in Medicare, Medicaid, the Children's Health Insurance Program, and the Federal Employees Health Benefits Program (FEHBP).

BCBSA commends CMS for updating the MLR filings to include actual settlements for any risk corridor payment received as the current MLR formula presumed that each year issuers will receive their full risk corridor payment requests. Currently this does not appear to be the case and this would result in artificially lowering the reported MLR thus not providing an accurate picture of a particular issuers financial performance against the MLR standard and in some cases could result in a health plan issuing a rebate when their true MLR is far above the minimum requirement. We also appreciate CMS retaining the current three month run-out period for the MLR and risk corridors program as this change would have shortened the amount of time allowed for issuers to compile data and do a more complex calculation.

In addition, BCBSA supports CMS updating the MLR filings to include the amount of cost-sharing reductions (CSRs) received for 2014, as reconciled in 2016 and any restated risk adjustment amounts. We recommend that issuers include these adjustments in their 2015 risk corridors calculation.

We continue to urge CMS to amend the MLR regulation to permit the counting of a health insurance issuer's investment in fraud prevention as an expense attributable to incurred claims, and we are encouraged that CMS is relying on NAIC's review of quality improvement activities that is currently under way to address this issue.

Looking beyond 2015, as a result of the health insurance excise tax moratorium in 2017 the accounting treatment of the tax may result in year-to-year mismatches between revenue for payment of the HIT for non-calendar year plans and the expense, causing issuers to understate their MLR in 2017, resulting in issuers potentially rebating fees attributable to the HIT expense. We recommend that CMS issue guidance similar to the Bulletin issued on December 30, 2013 allowing issuers to defer including premium collected during 2017 for fees on non-calendar year policies in its MLR and rebate calculations for both premiums received to pay the fee for 2016 and/or 2018.

BCBSA appreciates CMS issuing information on the Medical Loss Ratio (MLR) and Risk Corridors requirements. Our comments, recommendations and technical corrections are as follows:

1. MLR Reporting Form and Instructions

Issue:

For plans whose plan year crosses calendar years ("non-calendar year plan"), the vast majority of issuers will collect a portion of the health insurer excise tax ("fee") for the 2016 health insurance excise tax (HIT) and/or the 2018 health insurance excise tax during the 2017 calendar year, even though no HIT is due for 2017. A mismatch between the collection and payment of the HIT will occur as the year in which the amount of the excise tax will be collected, i.e., 2017, differs from when the fee expense is paid, i.e., 2016 or 2018. Issuers impacted by this mismatch will understate their MLR in 2017. The mismatch is solely attributable to the 2017 moratorium on the HIT. The mismatch is also similar to the impact of the fee on 2013 MLR and rebate calculations had FAQ #63 not been issued (link below).

Recommendation:

CCIIO should issue guidance similar to the Bulletin issued on December 30, 2013¹ allowing issuers to defer including premium collected during 2017 for fees on non-calendar year policies in its MLR and rebate calculations for both premiums received to pay the fee for 2016 and/or 2018.

Rationale:

¹ CCIIO Technical Guidance (CCIIO 2013—0004): Question and Answer Regarding the Medical Loss Ratio Reporting and Rebate Requirements. Issued on December 30, 2013. Available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/mlr-guidance-aca-fees-carveout-2013-12-30.pdf>

Because of the fee moratorium in 2017, the accounting treatment of the health insurance excise tax may result in year-to-year mismatches between revenue for payment of the HIT and the expense, which will create a downward bias of the MLR resulting in issuers rebating fees attributable to the HIT expense. Issuers should be permitted to defer the portion of the premiums that is collected in 2017 for non-calendar year plans for the 2016 and 2018 HIT similar to what was allowed for the 2013 MLR reporting year. Therefore guidance is needed similar to the Bulletin issued on December 30, 2013, allowing issuers to defer including premium collected for fees on non-calendar year policies during 2017 in its 2017 MLR rebate calculations.

Technical Corrections to the MLR Instructions:

Issue:

Part 2, Page 36, Line 2.18: The title of this line (advanced payments) does not match the description (reported amount should be the actual reconciled cost-sharing reductions).

Recommendation:

Please consider renaming this line to “Reconciled Payments of Cost-Sharing Reductions”.

Issue:

Part 3, Page 39, Line 1.4: The title of this line (advanced payments) does not match the description (reported amount should be the actual reconciled cost-sharing reductions).

Recommendation:

Consider renaming this line to “Reconciled Payments of Cost-Sharing Reductions”

Issue:

Part 1, Column 11 of the 2015 MLR Form Instructions shows the date of 12/31/16 but the date should be 12/31/15.

Recommendation:

Revise the date to 12/31/15.

2. Risk Corridor Calculation Issues

A. Reporting of Reconciled CSR

Issue:

On the MLR Annual Report Form Instructions (page 39, line 1.4), the amount of cost-sharing reductions (CSRs) received for 2014, as reconciled in 2016 is input in the PY1 column. However, the risk corridor calculation does not include any adjustment for the

difference between the amount reported for CSRs in the 2014 MLR and the actual reconciled CSRs.

Recommendation:

BCBSA recommends that CMS include an adjustment for the difference between the CSR previously reported and the reconciled CSR amount for the risk corridors calculation.

Rationale:

The difference between the CSR used in the prior MLR calculation and the actual reconciled amount should be included in the 2015 risk corridors calculation.

B. Restatement of Risk Adjustment Payments or Charges

Issue:

On the MLR Annual Report Form Instructions (page 40, line 1.6), any 2014 risk adjustment amounts that were restated due to changes or updates that HHS communicated after June 30, is input in the PY1 column. However, the risk corridor calculation does not include any adjustment for the difference between the amount reported for risk adjustment in the 2014 MLR and the amount actually received.

Recommendation:

BCBSA recommends that CMS include an adjustment for the difference between the risk adjustment previously reported and the amount received for the risk corridors calculation.

Rationale:

The difference between the previously reported risk adjustment and restated 2014 risk adjustment amounts should be included in the 2015 risk corridors calculation.

C. Transitional Policy Adjustments

Issue:

On the MLR Annual Report Form Instructions (page 45), there are two notes stating the following:

- For issuers in States that have not adopted CMS's transitional policy, Line 3.6 should equal Line 3.4.
- For issuers in States that have not adopted CMS's transitional policy, Line 3.7 should equal Line 3.5

Based on the definition in §153.500, the transitional policy adjustment of 2 percent for the 2015 benefit year applies to any state.

Recommendation:

BCBSA recommends these notes be removed from the instructions.

Rationale:

The MLR Annual Report Form Instructions should be consistent with regulation.

D. 2015 Risk Corridors Plan Level Form Instructions

Issue:

It appears CMS might have used the 2014 Draft Instructions as the base when updating the 2015 Draft Instructions, instead of the 2014 Final Instructions. There are a number of items that were changed from the draft to the final in 2014, that have now changed back in the 2015 Draft.

- *Earned Premium* - The draft 2015 Risk Corridors Plan-Level Form Filing Instructions references “billable premium”, whereas the final 2014 MLR/Risk Corridors Submission Checklist referenced “premium earned”.
- *Table 4, Column N* (Appendix A, page 16) – There is no listing for Table 4, column N. The calculation reference details for this appear to be copied into the Tab 3, “Risk Corridors Payment and Charge Calculation”, Line 1 detail in error.
- *Tab 3, “Risk Corridors Payment and Charge Calculation”, Line 1*- The calculation reference should state “Auto-calculated for the user: Column F + Column J + Column N”. The existing wording appears to be in reference to Table 4, Column N (which is missing, as mentioned in the prior bullet).
- *Tab 3, “Risk Corridors Payment and Charge Calculation”, Line 8* (Appendix A, page 17) - The calculation reference states that this is a “user input” cell, but this cell is auto-calculated for user.
- *Tab 3, “Risk Corridors Payment and Charge Calculation”, Line 9* calculation reference details appears to referencing Line 3 in places where it should be referencing Line 7, which is consistent with the Risk Corridors Plan Level Form. Please confirm.
 - If Line 8 is at least 108%: $80\% \times (\text{Line } 2 - 108\% \times \text{Line } 3 \times 7) + 2.5\% \times \text{Line } 7$.
 - If Line 8 is at least 103% but less than 108%: $50\% \times (\text{Line } 2 - 103\% \times \text{Line } 3 \times 7)$.
 - 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%: $80\% \times (\text{Line } 2 - 92\% \times \text{Line } 3 \times 7) - 2.5\% \times \text{Line } 7$.

Recommendation:

BCBSA recommends that CMS change all reference to “billable premium” in the 2015 Risk Corridors Plan-Level Form Filing Instructions to “premium earned” as was finalized in the

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2014 MLR/Risk Corridors Submission Checklist. Additionally, CMS should make the corrections noted above to the instruction form.

Rationale:

The risk corridors calculation should be using premium earned and not billable premium. Corrections should be made to the instructions so that issuers are correctly completing the Risk Corridors Plan-Level Form.

Thank you for the opportunity to comment on the Medical Loss Ratio Annual Reports, MLR Notices, and Recordkeeping Requirements. For questions please feel free to contact Richard White at (202) 626-8613 or richard.white@bcbsa.com.

We look forward to the chance to discuss these with you at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Haltmeyer", with a long horizontal flourish extending to the right.

Kris Haltmeyer
Vice President
Health Policy and Analysis
Blue Cross Blue Shield Association