

Center for Consumer Information and Insurance Oversight (CCIIO)
Office of Oversight
Division of Medical Loss Ratio (MLR)

Medical Loss Ratios

~ Enforcement Examinations

CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES

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Summary

- MLR Regulation Updates
- Status of federal and state MLR examinations
- Findings Summary from MLR examinations

2018 MLR Regulation Changes

- Three changes to the commercial MLR regulation (45 CFR Part 158)
 - A state may request an adjustment to the MLR standard in its Individual Market if it can demonstrate that an adjusted standard would help stabilize that market
 - Effective with 2017 reports
 - Issuers may report quality improving activity (QIA) expenses of 0.8% of earned premium across all markets even if such expenses were less than 0.8% without having to separately track and report these expenses
 - Issuers may count employees to determine group size based on *either* the existing MLR regulation standard or the method used for Risk Adjustment calculations, which is the state method (unless the state does not account for non-full-time employees, in which case the issuer would use the IRS' FTE method)

Commercial MLR Enforcement

- Section 2718 of the Public Health Service Act (PHSA) gives the Department of Health and Human Services (HHS) enforcement responsibility for the MLR requirements for issuers
- PHSA enforcement of reporting and rebate requirements includes:
 - Timely submission of an issuer's federal MLR report to HHS
 - Ensuring that the data reported complies with the definitions and criteria of the regulation and all related guidance
 - Timely and accurate notice of and payment of rebates

Commercial MLR Enforcement

- **HHS has the authority to examine issuers and their vendors regarding the reported data and timeliness of submissions**
 - Annual internal review and analysis of all MLR submissions
 - The Center for Consumer Information and Insurance Oversight (CCIIO) verifies the accuracy of the MLR and rebate calculations within each submitted MLR report based on the raw data included in the report
 - CCIIO performs certain data quality checks and cross-references to prior year report(s)
 - Comprehensive MLR examinations performed year-round and on a rolling basis
 - Substantive testing of the selected issuer's reported experience
 - Performed remotely and on-site
 - Non-compliance can result in fines of \$100 per day/per entity/per impacted individual
 - HHS can accept state MLR examinations if certain conditions are met

Commercial MLR Examinations

- MLR examinations under the PHSA began in March 2014 for the 2013 reporting year (which includes 2011 and 2012 data as well)
- As of January 2019, CCIIO conducted over 50 examinations
- In November 2018, CCIIO began reviewing the 2017 MLR reporting form, which includes 2015 and 2016 data
- In 2017, CMS provided grants to 10 states to support enforcement of the MLR standards – CA, CO, HI, IL, IN, KY, MA, MS, PA, UT

Commercial MLR Examinations

- **Issuers are selected for examination on the following basis:**
 - Random Selection
 - Risk Analysis
 - Complaints
 - Other – e.g., at a state’s request, concern regarding non-compliance brought to CClIO’s attention

Commercial MLR Examinations

- MLR examinations are conducted in accordance with the CCIIO MLR Examination Handbook and the Compliance Procedures (a.k.a. AUPs), which were created by CCIIO and the National Association of Insurance Commissioners (NAIC) and track the MLR regulation reporting components
- The MLR examination process is similar in many ways to state regulatory Financial Examinations
- Substantive testing of each reporting element
- CCIIO pays the cost of the examination

Commercial MLR Examinations

- State notification
 - The state department of insurance in which the selected issuer is domiciled is notified of the planned examination first
 - After CCIO confers with the state, the issuer is notified within a few days
- Company notification
 - CCIO emails the issuer to be examined an Exam Call Letter with notice of the examination, the data that will be requested and reviewed, and instructions for contacting CCIO and the examiner-in-charge (EIC) to arrange an entrance call

Calling a Commercial MLR Examination

- The issuer is notified of the examination via an Examination Call Letter
- CCIIO requests that the issuer designate a point of contact (POC) within 5 days and schedules an entrance meeting within 7 days of receipt
- An entrance meeting is held to review the examination process, CCIIO access to facilities and records, methods for data submission, the items needed, and to answer any questions. The issuer has 30 days to submit its MLR-related and other pertinent policies and procedures and corporate information
- A separate meeting is held to review portal access for data submissions. The issuer has 30 days to submit the requested data
- Business Operations and IT review meetings are held bi-monthly during the examination
- CCIIO sends the issuer the Preliminary Report and schedules an exit meeting

Exam Documents Requested

- How the issuer determined group size and market classification to ensure compliance with federal definitions
- List of activities and programs whose expenses were reported as QIA
- Support for expense allocation between related companies and among products, states and markets
- Support for reporting of Cost-Sharing Reductions, Advance Payment of Premium Tax Credits, and Risk Corridor Amounts, as applicable
- Support for reporting and allocation of regulatory and licensing fees and state and federal taxes
- Detailed explanation of how the issuer calculated member months and life years, average plan deductible
- Copies of HHS notices regarding the federal Transitional Reinsurance and Risk Adjustment Programs and expected payments/charges, as applicable
- Internal reports regarding the issuer's MLR program and processes

Exam Documents Requested

- A flow chart of information systems used in MLR reporting
- Reconciliation between the federal reporting form 12/31 column and the state Supplemental Health Care Exhibit (SHCE)
- Summary of the “blue blank” for issuers that file a Life & Health Annual Statement and summary of the “orange blank” for issuers that file a Health Annual Statement
- All inter-company and joint venture agreements that impact reporting
- Actuarial Opinion and Memorandum and actuarial analyses supporting claims liabilities
- Description of MLR work performed by third parties (e.g., CPAs)
- Narrative and data flow of claims from Electronic Data Interchange (EDI) to issuer’s claim system

Data Files Requested

- Claims and premium data files by state and market
- Reconciliation documents – data files to MLR Reporting Form and Reporting Form to Financial Statement
- Data dictionary for column names, content, formats, codes, etc.
- Records of capitation payments to providers with allocation methodology
- Third Party Administrator, Pharmacy Benefit Management (PBM) and Vendor payments
- Rebates file with calculation, amount/date paid and proof of distribution
- Fraud reduction expense and fraud recovery files

Compliance Testing Procedures, example

- **24 compliance procedures were created and are updated in conjunction with the NAIC as regulatory changes occur in order to help guide states that perform MLR examinations**
- **CCIO uses these compliance procedures as well**
- **Compliance Procedures track the MLR regulation section-by-section and explain the purpose of each procedure and the steps to follow**
- **Example 1:**

Regulation §158.110

Purpose: Test accuracy of reporting and reconcile with the Supplemental Health Care Exhibit

Procedure: 1. Verify that the issuer completed the federal MLR Annual Reporting Form (MLR Form) for every state for which they submitted the Supplemental Health Care Exhibit (SHCE) and that the MLR Form was submitted in a timely manner. 2. Verify that the amounts reported on the MLR Form are consistent with the amounts reported on the SHCE. Use the NAIC's MLR Reconciliation Report or similar tool to check for variations between the SHCE and the MLR Form.

Compliance Testing Procedures, Example 2

Regulation §158.30	Purpose: Test accuracy of reporting of earned premiums	<p>Procedure: 1. Verify that: All non-premium revenue, such as agent and broker fees and commissions, have been included in premium and reported as a non-claims cost. Determine whether any adjustments to premium revenue have been made as a result of this treatment and whether or not there is any resulting impact on the MLR calculation. If agent/broker fees/commissions have not been reported, confirm use of and payment to the agent/broker were not a condition of purchasing the policy. Earned premiums were reported on a direct basis.</p> <p>Earned premiums were adjusted to account for high risk pool assessments or subsidies, group conversion charges, and unearned premium. Experience rating refunds are reflected in claims rather than premiums. Written and unearned premium in the MLR and, if applicable, RC columns includes advance payments of the premium tax credit (APTC).</p> <p>Written and unearned premium in the MLR and, if applicable, RC columns does not reflect the impact of the Federal Transitional Reinsurance, Risk Corridors, or Risk Adjustment (premium stabilization programs).</p> <p>Earned premium on Pt 1 Ln 1.1 and Pt 3 Ln 2.1 is calculated correctly according to the formulas in the MLR Form Instructions for the applicable year (for both MLR and, if applicable, RC columns).</p> <p>2. Obtain the MLR Forms for the previous two years and verify that the following amounts are accurate: a. Pt 3 Ln 2.1, Col PY2 [MLR Form from two years prior:</p> <p><i>2013 MLR Form: (Pt 1, Lns 1.1 + 1.2 + 1.3, Cols 3/31/YY + Deferred PY1 – Deferred CY) – (Pt 4 Ln 6.1a, Col CY); 2014 MLR Form: (Pt 1, Lns 1.1 + 1.2 + 1.3, Cols 3/31/YY + Deferred PY1 – Deferred CY) – (Pt 3, Lns 1.5 + 1.6 + 1.7, Col CY) + (Pt 3 Ln 7.1a, Col PY1); 2015-2016 MLR Forms: (Pt 1, Lns 1.1 + 1.2 + 1.3, Cols 3/31/YY + Deferred PY1 – Deferred CY) – (Pt 3, Lns 1.5 + 1.6 + 1.7, Col CY)]</i></p> <p>b. Pt 3 Ln 2.1, Col PY1 [MLR Form from one year prior: see PY2 formula for the applicable year]</p> <p>c. Pt 3 Ln 2.1, Col CY [Current MLR Form: see PY2 formula for the applicable year]</p> <p>d. Pt 3 Ln 2.1, Col RC [Current MLR Form, (Pt 1, Lns 1.1 + 1.2 + 1.3, Col [RC] 3/31/YY) – (Pt 3, Lns 1.5 + 1.6, Col RC)]</p> <p>[Premiums=Pts 1 and 2, Sec 1; Pt 3 Sec 2]</p>
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One more example:

Compliance Testing Procedures, Example 3

Regulation §158.170 §153.520	Purpose: Test reasonableness and accuracy of expense allocations	<ol style="list-style-type: none">1) Verify reasonableness and accuracy of the allocation of taxes and expenses among states, lines of business and markets, and among affiliated issuers within a holding company. Include states and markets where the entity has business that is not subject to the commercial MLR rule (i.e., government program plans, other health business, self-funded (uninsured) plans).2) Verify that allocations of fraud reduction expenses (if applicable) are based on fair and reasonable standards and that the total amount of the allowable fraud reduction expense reported in the MLR Form does not exceed total recoveries.3) Verify that the issuer's allocation methods are consistent with the narrative provided in Pt 6 of the MLR Form.4) For issuers subject to the commercial RC rule, verify the following:<ol style="list-style-type: none">a. The reasonableness and accuracy of allocations to the ACA-compliant segment in the RC columns, including the reasonableness of the non-claims cost allocation methodology.b. That the non-claims costs reported in MLR Form Pt 1 Sec 5 are accurate and consistent with the methodology adopted by the issuer. <p>[Expense allocation=Pt 6]</p>
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Sampling for Substantive Testing

- **Random Sampling**
 - Premium – at least 25 transactions for each credible market
 - Claims - at least 25 transactions for each credible market
 - Rebate Payments – 25 transaction for each credible market in which rebates were paid
- **Judgmental Sampling**
 - QIA – based on types of programs and activities
 - Other (capitation, TPA fees, fraud reduction expenses, etc.)

Documentation Requested for Sample Items

■ Premium

- Policy forms/contract documents
- Enrollment/renewal application
- Documents supporting group size (surveys, etc.)
- Invoices, proof of payment
- Qualified Health Plan (QHP) verification

■ Claims

- Claim form
- Explanation of Benefits (EOB)
- Provider remittance, proof of payment
- Support for market classification (Policy Administration System)
- Evidence of proper payment of cost sharing reduction to provider

Documentation Requested for Sample Items (cont.)

- **Quality Improving Activities (QIA)**
 - Detailed description of activity and how it complies with QIA section of the MLR regulation
 - Rationale and calculation support for allocation of expenses from holding company or affiliate
 - Support for allocation of expenses between states and markets
 - Support for percentage of activity that qualifies as QIA (if applicable)
 - Quantitative calculation for salary expenses (time studies)
 - Support for outsourced activities

Commercial MLR Examinations

- Length of Examination – generally 3 - 4 months
- Substantive testing
- No materiality threshold
- If CCIO conducts the exam, CCIO will contact the DOI before the examination is called as well as once the examination is complete and prior to the exit conference with the issuer to review findings
- CCIO shares Preliminary and Final Reports with the DOI and issuer
- The DOI is invited to attend the exit conference
- The issuer has 30 days to respond to the Preliminary Report
- The issuer's response to any findings and corrective action plan is incorporated into the Final Report
- CCIO MLR examination reports are very detailed, and final reports are made public via the CCIO website

Format of Examination Reports

- Title Page followed by Cover Letter signed by program director
- Table of Contents
- Executive Summary
- Scope of Examination
- Summary of Key Findings Chart with citation for non-compliance
- Company Overview – Products sold, Management, Agreements, Reinsurance
- Accounts and Records
- Examination Results – MLR Data, Credibility-Adjusted MLR and Rebate Amounts, Rebate Disbursement and Notices, Compliance with Previous Recommendations
- Impact of Findings – recalculation of MLR where quantifiable
- Subsequent events
- Conclusions, Recommendations and Company Responses

MLR Examination Findings

- **Overview of prevalent findings from examinations of Reporting Forms**
 - Inadequate issuer documentation
 - Failure to use the correct definition for counting employees ~ results in possible incorrect market classification
 - Inappropriate classification of expenses as QIA or lack of salary time-studies
 - Over-reserving, overly large margin of conservatism
 - Failure to report claims and earned premium on a direct basis (prior to reinsurance)
 - Failure to correctly determine the average deductible
 - Calculation errors, data entry errors
 - Failure to properly allocate de minimis rebates
 - Inconsistent or unreasonable allocation method – such as by group size
 - Errors on the Form under review may trigger review of prior years' Forms
 - Reporting Form may need to be re-filed or prior year (PY) columns corrected on next filing

State MLR Examinations

- If a state wants to conduct an examination, CCIO will provide technical guidance and support to the state
- CCIO will hold informal training calls with the state to share our process, letter and report templates and answer questions
- NAIC issued MLR Examination Reporting Instructions to assist states
- A few states have or are performing MLR-specific examinations while several other states review MLR as part of a financial or multi-state examination

State MLR Examinations

- CCIIO can accept state MLR audits if certain conditions are met
 - Several conditions noted in the regulation (45 CFR §158.403)
 - The state must permit public release of the findings
 - The audit must confirm that the issuer reported in accordance with MLR definitions for earned premium, incurred claims, QIA, and appropriateness of allocations
 - The audit must report on the accuracy and timeliness of the MLR calculation and any rebate payments
 - The state must submit the report to HHS/CCIIO within 30 days of finalization

State MLR Examinations

- CClIO will review the state report and ask:
 - Was the MLR Compliance Procedures Spreadsheet utilized?
 - Were there any noteworthy findings? Were there any findings other than those noted in the report?
 - Were all areas of the examination tested utilizing the substantive approach, or were there areas where reliance on internal controls was the primary approach?
 - Whether the issuer or parent company has business in other states and if so, did the examiner review either their SHCE or their federal form state templates for those other states?
 - How were samples selected for substantive testing and was completeness testing performed on the population datasets prior to selecting samples?

State MLR Examinations

- CCIIO will review the report and ask (cont'd.):
 - How did the examiner test for earned premium, incurred claims, QIA, reinsurance, taxes, life years, the MLR calculation, and rebates and notices, if any?
 - How did the examiner test that the issuer correctly determined group size and market classification?
 - Did reserves decrease from 12/31 to later years and if so, by how much/what percentage?
 - If the issuer used a PBM for its pharmacy coverage or any other vendors (such as for behavioral health, chiropractic or high tech radiology coverage), how did the issuer determine the portion of the amount paid to such vendor that was attributable to incurred claims and QIA versus the vendor's administrative expenses?

State MLR Examinations

- CCIO will review the report and ask (cont'd):
 - Were material reconciling items between the premium population, the Annual Statement and the MLR Reporting Form adequately described and supported by the company?
 - What was the basis of the expense allocation methodology and why was it reasonable?
 - What items were included in the issuer's QIA expenses? Was the issuer able to provide descriptions of its QIA programs and explain how it allocated those expenses between markets, product lines, and affiliated companies?
 - Does the examiner have a high level of comfort that the company is in compliance with 45 CFR Part 158?

MLR Questions Email Inbox

- The MLR questions email inbox was established in 2010 for any MLR-related question
- CCIIO has received over 3,500 questions about various aspects of the MLR program. Recent frequently asked questions concern:
 - How to adjust Risk Corridor payments/receipts on the 2017 and later forms
 - How to report QIA when the 0.8% of premium method is elected
 - How to report small groups from prior reporting years if using the new method
 - How to report Risk Adjustments and Reinsurance amounts
 - Differences between the 12/31 and 3/31 columns and the SHCE and the federal form
 - Ability to receive credit for prior year rebates post-2013
 - Applicability to Student Health Plans, Blanket Policies, MEWAs, Non-Federal Governmental Plans, Medicaid, CHIP, etc.
 - How to complete specific line items of the Reporting Form
 - Filing requirements if all Health Insurance Coverage is in run-off
 - Revised attestation process in the Health Insurance Oversight System (HIOS)

MLR Information on CCIIO's Website

- CCIIO Website: <https://www.cms.gov/cciiio/index.html>
- MLR Website for Regulations: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Medical-Loss-Ratio.html>
- MLR Guidance (Q&As): <http://www.cms.gov/cciiio/resources/Regulations-and-Guidance/index.html#Medical Loss Ratio>
- MLR Examination Reports can be found at: https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/MLR_examinations_reports.html
- Search and review issuers' MLR reporting form submissions (by issuer or by state) under the MLR Data Resources section at: <https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.html>
- The MLR Annual Reporting Forms and Instructions can be found under the MLR Other Resources section at: <https://www.cms.gov/cciiio/Resources/Forms-Reports-and-Other-Resources/index.html#Medical Loss Ratio>

Contact Information

- **MLR Questions General Mailbox:**
 - MLRQuestions@cms.hhs.gov