

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance
Oversight 200 Independence Avenue SW
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Title: Insurance Standards Bulletin Series—INFORMATION

Subject: CCIIO Technical Guidance: Process for a State to Submit a Request for Adjustment to the Individual Market Medical Loss Ratio Standard of PHS Act Section 2718

Markets: Individual

I. Purpose

Section 2718 of the Public Health Service Act (PHS Act), as added by the Patient Protection and Affordable Care Act (PPACA), requires health insurance issuers (issuers) to submit a report to the Secretary concerning their medical loss ratio (MLR) and requires them to issue a rebate to enrollees if the issuer's MLR is less than the applicable MLR standard established in section 2718(b). This Bulletin sets forth the address and format by which a State must submit its request to the Secretary for an adjustment to the individual market MLR standard under 45 CFR §158.301, et. seq.

II. Background

Section 2718(b) of the PHS Act, and the implementing regulations at 45 CFR §§158.210 and 158.240, require an issuer to provide a rebate to enrollees, on a pro rata portion, if the ratio of the amount of premium revenue expended by the issuer on reimbursement for clinical services provided to enrollees under the health insurance coverage and for activities that improve health care quality to the total amount of premium revenue (excluding Federal and State taxes and licensing or regulatory fees) is less than 80 percent in the individual market.

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. Consistent with the amendments to 45 CFR Part 158 made in the HHS Notice of

Benefit and Payment Parameters for 2019 final rule¹, starting in 2018, an adjustment may be granted if the State can demonstrate that a lower MLR standard could help stabilize its individual market.

Title 45 CFR Part 158 establishes the process by which a State may request an adjustment to the individual market MLR standard and sets forth the information that must be included in such a request. *See* 45 CFR §§158.301 through 158.350. Specifically, §158.320 provides that a State must submit the information required by §§158.321 through 158.323 in electronic format, and §158.340(a) requires a State to submit electronically, to an address and in a format prescribed by the Secretary, all of the required information in order for the request for an adjustment to the individual market MLR standard to be considered by the Secretary.

III. Address and Format for State Requests for an Adjustment to the Individual Market MLR Standard

A State requesting an adjustment to the MLR standard for the individual market must submit its request and the information required in §§158.320 through 158.323 to the Secretary via the following email address: MLRAdjustments@cms.hhs.gov. HHS will generate an auto-response email to confirm receipt by HHS of the State's MLR adjustment request. If a State does not receive such an email confirming receipt, the State should contact HHS at (301) 492-4172 to confirm whether HHS received the State's email request.

Pursuant to §158.310, the request must be made by the State's insurance commissioner, superintendent, or comparable official of the State. The request must include the proposed adjusted MLR standard and an explanation of how the adjustment will help stabilize the State's individual market (§158.322), as well as the proposed effective date and duration of the adjustment (up to three years, per §158.311). In proposing the effective date for the adjustment, States are expected to take into consideration issuers' ability to factor the adjustment, if and when one is granted, into their respective pricing and market participation decisions.

A State submitting a request for an adjustment to the individual market MLR standard must submit all data required by §158.321 to the Secretary in Excel spreadsheet format. The data should be provided for the preceding calendar year; however, at the State's option, the State may choose to additionally provide the data for the current year.

As required in §158.321, the required data must be submitted for each issuer that actively offers coverage in the individual market in the State, and for each such issuer broken down into the following individual market segments, as applicable:

- on-Exchange health plans;
- off-Exchange health plans;

¹ Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2019; Final Rule, (April 9, 2018), available at <https://www.cms.gov/cciio/index.html>.

- grandfathered health plans as defined in 45 CFR §147.140;
- coverage that meets the criteria for transitional policies outlined in applicable guidance (sometimes referred to as “grandmothered” health plans); and
- non-grandfathered single risk pool coverage.

The State is not required to provide the data for the issuer’s student health insurance coverage as defined in 45 CFR §147.145 or individual market excepted benefits as defined in 45 CFR §148.220.

For each of the issuer’s market segments listed above, the request must provide:

- total earned premium;
- total incurred claims;
- total life-years (member months divided by 12);
- total covered lives (number of enrollees on the last day of the period);
- total agents’ and brokers’ commission expenses;
- net underwriting gain;
- whether the issuer has provided notice to the State that the issuer will cease or begin offering individual market coverage on the Exchange, in certain geographic areas (for example, counties) or in the entire individual market in the State.

The request must also include the Risk-Based Capital (RBC) ratio for each issuer for which the data are provided.

In addition, the State must provide information regarding whether any *other* issuer (for example, a new entrant) has provided notice to the State that the issuer will cease or begin offering individual market coverage on the Exchange, in certain geographic areas, or in the entire individual market in the State.

As provided in §158.320, the State may submit any additional information it determines would support its request. In the event certain data are unavailable or the collection of certain data is unduly burdensome, a State may provide written notice to the Secretary and the Secretary may, at his discretion, request alternative supporting data or move forward with his determination.

If, as provided in §158.340(b), a State, at its option, chooses to submit its adjustment request by overnight delivery service or by U.S. mail in addition to the mandatory electronic submission, a State must submit its adjustment request to the Center for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, Office of Oversight, attention MLR Division, Room 737F, 200 Independence Ave. SW, Washington, DC 20201.

Where to get more information:

If you have any questions regarding this Bulletin, please contact the Center for Consumer Information and Insurance Oversight, Office of Oversight, by telephone at (301) 492-4172 or by email at MLRAdjustments@cms.hhs.gov.