DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information & Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

Date: July 24, 2018

From: Samara Lorenz, Director, Oversight Group

Title: Insurance Standards Bulletin Series—INFORMATION

Subject: CCIIO Technical Guidance: Reporting Risk Adjustment Transfer Amounts for Medical Loss Ratio Purposes

Markets: Individual, Small Group

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 MLR standards established in section 2718(b). This Bulletin provides information on the manner in which issuers can account for risk adjustment transfer amounts in their MLR and rebate calculations on the MLR reports for the 2017 reporting year that issuers submit to the Secretary.

II. Background

The PHS Act section 2718 and the implementing regulations at 45 C.F.R. §§ 158.130, 158.140, 158.221, and 158.240 require an issuer to account for amounts paid or received under the risk adjustment program established by section 1343 of the PPACA in the issuer's MLR and rebate calculations on the annual MLR report. Specifically, as explained in the Department of Health and Human Services (HHS) Notice of Benefit and Payment Parameters for 2014 final rule (78 FR 15410, 15504), risk adjustment payments reduce an issuer's MLR numerator, while risk adjustment charges increase it.

For reporting years 2014 and later, 45 C.F.R. § 158.110(b) requires issuers to submit MLR reports to the Secretary by July 31 of the year following the end of an MLR reporting year. MLR reports for the 2017 reporting year are due by July 31, 2018. Section 2718(b) of the PHS Act and 45 C.F.R. §§ 158.210 and 158.240, require an issuer in the individual or small group market to provide a rebate to enrollees, on a pro rata basis, if the issuer's MLR is less than 80 percent by September 30 following the end of the MLR reporting year. 2017 MLR rebates must be provided by September 30, 2018.

As set forth in the July 9, 2018 *Summary Report on Permanent Risk Adjustment Transfers for the 2017 Benefit Year*, and in a REGTAP announcement to issuers regarding their issuer-specific risk adjustment results, on February 28, 2018, the United States District Court for the District of New Mexico issued a decision vacating use of the statewide average premium by the Centers for Medicare & Medicaid Services (CMS) in the risk adjustment transfer formula established under section 1343 of the PPACA for the 2014-2018 benefit years, pending further administrative proceedings. The ruling prevents CMS from making further collections or payments under the risk adjustment program, including amounts for the 2017 benefit year, at this time.

On March 28, 2018, the federal government moved the United States District Court for the District of New Mexico to reconsider its decision. A hearing on the matter was held on June 21, 2018. CMS will continue to update stakeholders as developments materialize.

III. Reporting Risk Adjustment Transfer Amounts for MLR Purposes

For the 2017 MLR reporting year, issuers can use a reasonable estimate of their respective risk adjustment transfer amounts (for all benefit years included in the aggregation) for MLR reporting and rebate calculation purposes.

Reasonable estimates may include zero, the amount listed in the July 9, 2018 *Summary Report on Permanent Risk Adjustment Transfers for the 2017 Benefit Year*, the amount suggested or required by the issuer's respective State Department of Insurance, or a different amount the issuer reasonably determines to be appropriate under the circumstances.

If additional rebate payments are later determined to be required, CMS would not require the issuer to pay a late payment interest under 45 C.F.R. § 158.240(f) if the issuer used one of the "reasonable estimate" options outlined in this document.

CMS will provide further guidance, as may be necessary, regarding the treatment of risk adjustment transfer amounts for MLR reporting and rebate calculation purposes for the benefit years impacted by the lawsuit.

Issuers who believe that they will not be able to file their MLR reports by the July 31, 2018 deadline as a result of this guidance may contact MLRQuestions@cms.hhs.gov.

Where to get more information:

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