



Understanding MLR Requirements Question and Answer

On Monday, BenefitMall sent out an alert regarding the new "medical loss ratio" (MLR) requirements for health plans that were published by the U.S. Department of Health and Human Services (HHS), pursuant to the Patient Protection and Affordable Care Act (PPACA). This update provides some additional details regarding the new "interim final rule" (IFR) in a question and answer (Q&A) format.

WHAT IS THE EFFECTIVE DATE?

The new MLR requirements go into effect January 1, 2011, which represents a very fast implementation cycle.

ARE GRANDFATHERED HEALTH PLANS EXEMPT?

No, the new MLR rule applies to all commercial insurers. Self-funded health plans are exempt.

DID HHS ENDORSE THE NAIC RECOMMENDATIONS?

Yes, for the most part. Through the new regulations, HHS endorsed the recommendations made by the National Association of Insurance Commissioners (NAIC). HHS elaborates: "This interim final regulation adopts and certifies in full all of the recommendations in the model regulation of the National Association of Insurance Commissioners (NAIC) regarding MLRs."

However, on careful review of the new regulations, HHS did extend and interpret many of the NAIC recommendations, so additional guidance is provided in the IFR, and more regulations will be issued by HHS in the future.

HOW ARE AGENT AND BROKER COMMISSIONS TREATED UNDER THE NEW FEDERAL MLR STANDARD?

Unfortunately, broker and agent compensation is still considered part of the MLR administrative bucket. Although the NAIC communicated its concerns about the treatment of broker commissions, HHS will consider broker commissions as a "non-claims" cost, which is part of the "administrative" portion of the MLR formula.

IS HHS OPEN TO ADDITIONAL COMMENTS ON HOW AGENT AND BROKER COMMISSIONS ARE HANDLED?

Yes. HHS is open to considering some adjustment to this approach if the new MLR calculations hurt access to agents and brokers. In the IFR, HHS notes: "The potential impact of the MLR standard on agents and brokers merits recognition, and in this regulation the impact of the MLR standard on agents and brokers will be a factor in considering whether individual markets would be destabilized. HHS seeks comments on the approach taken in this regulation and on the issues related to agents and brokers..."

DOES HHS HAVE ANY FLEXIBILITY ON HOW MLR CALCULATIONS ARE HANDLED FOR SPECIAL CIRCUMSTANCES?

Yes. HHS signaled some flexibility on how the final MLR calculations are determined. The IFR notes "that the methodologies used to calculate the measures of the activities reported shall be designed to take into account the special circumstances of smaller

plans, different types of plans, and newer plans.” The IFR also makes it clear that HHS will authorize annual adjustments, as necessary, to keep the marketplace stabilized and to accomplish PPACA’s goal of continued transparency.

WHAT ARE THE SPECIFIC REPORTING REQUIREMENTS FOR HEALTH PLANS USED AS THE BASIS OF THE MLR?

The basic categories include:

1. Reimbursement for clinical services provided to enrollees under the health insurance plan;
2. Activities that improve health care quality for enrollees;
3. All other “non-claims” costs including Broker commissions;
4. Federal and State taxes and licensing or regulatory fees.

In the IFR, HHS adds: “The precise form and content of the data that issuers must report to the Secretary will be announced in a subsequent Federal Register notice. It is anticipated that the data to be submitted will be closely coordinated with the data included on the Supplemental MLR Exhibit that is filed by issuers with State departments of insurance as part of their Annual Statement.”

WILL MLR CALCULATIONS BE BROKEN DOWN BY MARKET CATEGORIES?

Yes. HHS will follow the NAIC’s recommendations to track MLR’s based upon three different market segments:

1. Large group market;
2. Small group market;
3. The individual market.

HHS defines the size of the small group market as a group between 1 to 100 employees. States have the option of lowering the upper threshold for a period of time to 50 employees for reporting purposes. HHS will issue further guidance on how the MLR should be calculated based upon the different market segments.

WILL MLR CALCULATIONS FOR EACH HEALTH PLAN CATEGORY BE BASED UPON A FEDERAL OR STATE STANDARD?

State-based MLR calculations will be required. In the IFR, HHS elaborates: “State aggregation is most consistent with the requirements of the statute, particularly provisions permitting State-level exceptions to the minimum loss ratio, and will result in information that is more meaningful to consumers.”

ARE THE MLR CALCULATIONS BASED ON THE POLICY YEAR OR CALENDAR YEAR?

MLR calculations will be based on the calendar year. In the IFR, HHS says: “The NAIC has recommended, and HHS concurs, that for purposes of MLR reporting and calculation, the term ‘plan year’ in section 2718 should be interpreted to refer to the calendar year for that plan, and not necessarily the plan year that applies for other purposes.”

CAN A STATE ESTABLISH A HIGHER MLR THRESHOLD (E.G., LOWER ADMINISTRATIVE PERCENTAGE)?

Yes, a state can enforce a threshold higher than the federal levels of 80% and 85%. In the IFR, HHS notes: “States are permitted to establish a higher MLR standard than provided by the Affordable Care Act, and if a State has done so, the State’s standard applies.”

WHAT HAPPENS WHEN HEALTH PLANS DO NOT COMPLY WITH MLR STANDARDS?

When a health plan’s administrative expenses are over the 15% threshold (for large groups) and the 20% threshold (for small groups), the new regulations will require the insurer to send rebates to each person who is insured under the applicable policies. HHS says: “The interim final regulations require issuers to provide information to consumers about the rebate they are receiving. At this time, HHS has not developed the model disclosure language for the rebate notice to enrollees that issuers will be required to send beginning August 1, 2012, based upon plan years starting January 1, 2011. In the near future, HHS will publish the model disclosure language and will solicit

public comment.”

Note: All HHS quotes above are from the [new MLR regulation](#).

As more information becomes available, BenefitMall is committed to keeping you up-to-date in a timely manner. Visit www.BenefitMall.com to view past Legislative Alerts in the “Newsroom” section. Or, you may visit www.HealthcareExchange.com for blog posts, polls, surveys and numerous resources. If you have any questions, please contact your local BenefitMall Sales Team and they will be happy to assist you. Thank you for taking the time to read through this important notification.

Sincerely,



Michael Gomes
Executive Vice President

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