HEALTH CAPITAL Topics
Volume 5, Issue 1
January 2012
Cora F. Drew, Esq., MPH - Director of Research • Jessica C. Burt - Editor • Jacob Z. Voss - Interim Editor

Medical Loss Ratio Final Rule Divides Consumers and Insurers

On December 2, 2011, the Department of Health and Human Services (HHS) issued a final rule regarding the Medical Loss Ratio (MLR), implementing changes required under the Patient Protection and Affordable Care Act (ACA). The final rule addresses a number of issues, including "*mini-med*" and "*expatriate*" policies, ICD-10 conversion costs, fraud reduction expenses, community benefit expenditures, and the distribution of rebates in group insurance markets.[1] .A significant change in industry oversight, the rule considers insurance broker and agent fees as administrative costs for purposes of a MLR calculation, which has received praise from consumer advocacy groups and criticism from the insurance industry.[2]

Historically, insurance companies have spent a substantial percentage of premiums paid by beneficiaries on administrative costs and profits, such as executive salaries, overhead, and marketing. MLR refers to the proportion of insurance premium revenues spent on clinical services and quality improvement and other non-administrative activities.[3] The ACA, signed into law on March 23, 2010, limits the amount that insurance companies can spend on activities that do not directly benefit beneficiaries (i.e., administrative costs) and requires HHS to provide regulation of MLRs on a State by State basis.[4]

The final rule requires insurance companies to spend 80 percent of insurance premiums on medical care and healthcare quality improvement in the individual and small group markets, and 85 percent of premiums on these components in the large group markets, exclusive of administrative costs.[5] Beginning in 2011, insurance companies have been required to report their MLR data to HHS annually, in an effort to allow consumers to evaluate available health plans based on value they provide. Starting in 2012, insurers who fail to meet MLR requirements must provide a rebate to their customers.[6] The final rule allows the Secretary of HHS, through The Center for Consumer Information and Insurance Oversight (CCIIO), to adjust the MLR standard in states where it is determined that meeting the 80 percent MLR standard might destabilize the individual market. In order to qualify, a state must demonstrate that requiring its insurers to meet this standard would decrease the availability of insurance plan choices for consumers.[7]

To date, more than a dozen states have applied for an adjustment to the MLR standard.[8] While a majority of states (i.e., Oklahoma, Michigan, Indiana, Delaware, Kansas, Louisiana, North Dakota, and Florida - 57 percent of with complete applications) were denied an MLR adjustment, CCIIMO has allowed various models of leniency regarding the MLR standard for those approved.[9] Maine is the only state that received an overall downwards adjustment to the MLR standard, lowered to 65 percent.[10] In New Hampshire, Kentucky, Georgia, and Iowa, CCIIO implemented a gradual adjustment requiring the full 80 percent MLR standard by 2013.[11] Nevada was given a one year adjusted MLR standard of 75 percent, and the option to reapply in the next reporting year.[12] To date, three states are undergoing review of their requested adjustments. Although a majority of states have not applied for an adjustment to the MLR standard, HHS's interim rule on rebate penalties for exceeding the MLR requirement has received contradicting reviews.[13]

On the same day the MLR final rule was announced, HHS also filed an interim final rule regarding the MLR rebate requirements for non-federal governmental plans. The interim final rule streamlines the rebate issuance process by allowing plans to issue rebates to the group policyholder in a lump sum, rather than to individual enrollees. The rule gives policyholders the option of using the subscriber portion of the rebate in one of the following three ways: (1) reduce subscribers' annual premium for all subscribers covered under all policies offered; (2) reduce subscribers' annual premium only for the policy on which the rebate was based; or, (3) provide a cash refund to subscribers covered by the policy on which the rebate is based. Each option would result in consumer savings, either through premium reduction or cash refunds.[14]

The main critics of the HHS rebate are insurance companies, as only 36 percent of all insurers were expected to be under the MLR standard in 2011, with the remaining 64 percent of companies required to provide consumer rebates.[15] Specifically, the inclusion of insurance broker and agent fees as administrative costs has created concerns, with the insurance industry claiming such activities are necessary services for consumers that will likely be hindered by the new regulations.[16] Recently, the National Association of

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Insurance Commissioners reversed their initial support of the HHS rule, instead requesting HHS and Congress to amend the ACA. While the insurance industry claims the MLR rule will create a "*desperate economic situation*," consumer groups support the inclusion of insurance broker and agent fees as administrative costs, calling the rule, "*a great victory for consumers … maintain[ing] the integrity of incredibly important consumer protections that hold the insurance industry accountable*."[1] HHS will accept comments on the interim final rule until February 6, 2012.[17]

1 "Medical Loss Ratio Requirements under the Patient Protection and Affordable Care Act" Federal Register, Vol. 76 No. 235, (December 2, 2011), p. 76574-76594.
2 "MLR Final Rule Keeps Broker Fees as Administrative Costs" By Margaret Dick Tockness, HealthLeaders Media, December 5, 2011, http://www.healthleadersmedia.com/print/HEP-273901/MLR-Final-Rule-Keeps-Broker-Fees-as-Administrative-Costs (Accessed 1/4/2012); "Statement from NAIC President Susan E. Voss" National Association of Insurance Commissioners, 2011, http://www.naic.org/Releases/2011_docs/statement_naic_president_voss_resolution.htm (Accessed 12/13/2011).
3 "Medical Loss Ratio" Center for Consumer Information and Insurance Oversight, http://cciio.cms.gov/programs/marketreforms/mlr/index.html (Accessed 1/4/2012).
4 "Patient Protection and Affordable Care Act" Pub. L. 111-148, Section 1001,124 STAT. 130 (March 23, 2010).
5 "Fact Sheets & FAQs: Medical Loss Ratio: Getting Your Money's Worth on Health Insurance" Center for Consumer Information and Insurance Oversight, http://cciio.cms.gov/resources/factsheets/mlrfinalrule.html (Accessed 12/13/2011).
6 CMS "Fact Sheets & FAQs: Medical Loss Ratio: Getting Your Money's Worth on Health Insurance."
7 CCIIO "Medical Loss Ratio."
8 Ibid.
9 "Letter From CCIIO to Various States Regarding Requests for Adjustment to Medical Loss Ratio Standards" By Steven B. Larson, Center for Consumer Information and Insurance Oversight, To: Kevin M. McCarty, Florida Office of Insurance

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Robert James Cimasi, MHA, ASA, FRICS, MCBA, AVA, CM&AA, serves as President of **HEALTH CAPITAL CONSULTANTS** (HCC), a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

Mr. Cimasi holds a Masters in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Intuition of Chartered Surveyors (FRICS – Royal Institute of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, the author of several books, the latest of which include: "*The U.S. Healthcare Certificate of Need Sourcebook*" [2005 - Beard Books], *"An Exciting Insight into the Healthcare Industry and Medical Practice Valuation"* [2002 – AICPA], and *"A Guide to Consulting Services for Emerging Healthcare Organizations"* [1999 John Wiley and Sons].

Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious "*Shannon Pratt Award in Business Valuation*" conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows.

Todd A. Zigrang, MBA, MHA, ASA, FACHE, is the Senior Vice President of **HEALTH CAPITAL CONSULTANTS** (HCC), where he focuses on the areas valuation and financial analysis for hospitals and other healthcare enterprises. Mr. Zigrang has significant physician integration and financial analysis experience, and has participated in the development of a physician-owned multi-specialty MSO and networks involving a wide range of specialties; physician-owned hospitals, as well as several limited liability companies for the purpose of acquiring acute care and specialty hospitals, ASCs and other ancillary facilities; participated in the evaluation and negotiation of managed care contracts, performed and assisted in the valuation of various healthcare entities and related litigation support engagements; created pro-forma financials; written business plans; conducted a range of industry research; completed due diligence practice analysis; overseen the selection process for vendors, contractors, and architects; and, worked on the arrangement of financing.

Mr. Zigrang holds a Master of Science in Health Administration and a Masters in Business Administration from the University of Missouri at Columbia, and is a Fellow of the American College of Healthcare Executives. He has co-authored *"Research and Financial Benchmarking in the Healthcare Industry"* (STP Financial Management) and *"Healthcare Industry Research and its Application in Financial Consulting"* (Aspen Publishers). He has additionally taught before the Institute of Business Appraisers and CPA Leadership Institute, and has presented healthcare industry valuation related research papers before the Healthcare Financial Management Association; the National CPA Health Care Adviser's Association; Association for Corporate Growth; Infocast Executive Education Series; the St. Louis Business Valuation Roundtable; and, Physician Hospitals of America.

Anne P. Sharamitaro, Esq., is the Vice President of **HEALTH CAPITAL CONSULTANTS** (HCC), where she focuses on the areas of Certificate of Need (CON); regulatory compliance, managed care, and antitrust consulting. Ms. Sharamitaro is a member of the Missouri Bar and holds a J.D. and Health Law Certificate from Saint Louis University School of Law, where she served as an editor for the Journal of Health Law, published by the American Health Lawyers Association. She has presented healthcare industry related research papers before Physician Hospitals of America and the National Association of Certified Valuation Analysts and co-authored chapters in "*Healthcare Organizations: Financial Management Strategies*," published in 2008.