Memorandum

October 2, 2012

To: Steve Ostlund, Chair, HCRAWG Medical Loss Ratio Subgroup

Re: Comments on IRD14-001

America’s Health Insurance Plans (AHIP) appreciates the opportunity to provide these comments regarding the issue discussed in IRD14-001. AHIP is the nation’s trade association representing member companies providing health, long-term care, dental, disability and supplemental coverage to more than 200 million Americans.

IRD14-001 addresses the potential interplay between Risk Corridor payments and the rebate calculations for 2014-2016. In looking at the applicable CMS publications dealing with Risk Corridors, it would appear necessary to more exactly spell out terms to be used. Amounts due to or paid to CMS under the Risk Corridor provisions are defined as “charges” while amounts due to or paid by CMS to a QHP are defined as “payments.”

The current issue is stated as “Should Risk Corridor payments reduce MLR rebates?” a one-sided question. We believe the intended one-side relates to Risk Corridor charges. We do not support looking at only one side of the Risk Corridor issue. We recommend the issue be rephrased as: Should Risk Corridor charges (funds from QHPs to HHS) and payments (funds from HHS to QHPs) be a part of the MLR calculation?

For the Evaluation section, we propose the following:

Section 2718 of the ACA provides clear direction that they should be included:

“(1) REQUIREMENT TO PROVIDE VALUE FOR PREMIUM PAYMENTS.—

“(A) REQUIREMENT.—Beginning not later than January 1, 2011, a health insurance issuer offering group or individual health insurance coverage (including a grandfathered health plan) shall, with respect to each plan year, provide an annual rebate to each enrollee under such coverage, on a pro rata basis, if the ratio of the amount of premium revenue expended by the issuer on costs described in paragraphs (1) and (2) of subsection (a) to the total amount of premium revenue (excluding Federal and State taxes and licensing or regulatory fees and after accounting for payments or receipts for risk adjustment, risk corridors, and reinsurance under sections 1341, 1342, and 1343 of the Patient Protection and Affordable Care Act) for the plan year (except as provided in subparagraph (B)(ii)), is less than—

“(i) with respect to a health insurance issuer offering coverage in the large group market, 85 percent, or such higher percentage as a State may by regulation determine; or
“(ii) with respect to a health insurance issuer offering coverage in the small group market or in the individual market, 80 percent, or such higher percentage as a State may by regulation determine, except that the Secretary may adjust such percentage with respect to a State if the Secretary determines that the application of such 80 percent may destabilize the individual market in such State. [Emphasis added]

The ACA appears to provide that the effect is to be included in the denominator.

HHS regulations change “payments and receipts” to charges and payments and state that the program is designed to “limit insurer losses (or gains)”\(^1\) and in the calculations for either a charge or payment, the allowable administrative costs are limited to 20% of “premiums earned with respect to the QHP (including any premium tax credit under any governmental program)\(^2\).”

Both charges and payments are calculated in reference to the ‘target amount’ and this most closely compares to items in the numerator of the MLR calculation. The phrase “after accounting for” may allow for a choice of reflecting in the numerator or denominator of the MLR calculation, but should not be read as permitting exclusion. Whichever choice is made, Part 2 of the MLR spreadsheet and instructions should be revised to include risk corridor charges and payments. If charges and payments are not expected to be completed\(^3\) until after the MLR calculations are due, then accruals should be included in the instructions and differences between accruals and payments reflected in later year’s MLR calculations.

Sincerely,

William C. Weller,
Omega Squared – consultant to AHIP

cc: Candy Gallaher SVP State Policy - AHIP
    Eric King, NAIC staff to HATF

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\(^1\) Federal Register: Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment page 3.

\(^2\) Ibid page 33.

\(^3\) Please note IRD14-016 for the need for reasonable estimates prior to the due date of the MLR calculations.