MLR Audit Procedures FAQ

1. Q. Why did the NAIC develop MLR audit/examination procedures?
   A. Under the Code of Federal Regulation (CFR), Title 45, Part 158, Section 403, HHS is permitted to accept a State regulator’s audit/examination provided certain criteria are met. The NAIC worked with State regulators to develop agreed upon procedures (AUPs) to provide guidance as to what work can be performed to avoid duplication of MLR audit work by HHS and State insurance regulators.

2. Q. How will State examiners access the procedures?
   A. At this time, the AUPs are not designed to be incorporated into the Examiners Handbook. Instead, regulators can access the complete documents on the NAIC website. Initially, the procedures will be placed on the Health Reform Exam (E) Technical Group’s webpage as well as on the Financial Examiners’ webpage in StateNet.

3. Q. Must all of the procedures be conducted in order for HHS to accept the audit findings?
   A. To ensure HHS’s acceptance of the State regulators’ MLR audit, all procedures should be performed. Modifying or limiting the procedures may require additional dialogue with HHS to allow them to determine whether their audit role will be fulfilled.

4. Q. What is the process and timeline for determining if HHS will accept the MLR review work performed by a State?
   A. At the conclusion of a State risk-focused examination (or a market conduct examination or stand-alone examination) during which the MLR filing is audited, the State will provide a web link to the publication of its report to HHS indicating the procedures applied and a description of any potential issues related to the MLR reporting and rebate calculation.

5. Q. How can Phases 1-4 of the RFE process (assessment of priority risks) be used to limit the procedures or limit testing by HHS?
   A. The MLR audit procedures are considered compliance procedures and therefore will not necessarily fit into the risk-focused exam process. If MLR reporting is included in the risk assessment work and control reviews, such results will likely reduce the application of the procedures (AUPs). The rationale for limiting the work must be communicated to HHS to determine whether the report findings using this methodology will be accepted. (See Q. 3)

6. Q. How frequently must a State conduct an MLR audit/examination to avoid an HHS audit of the target company?
   A. The procedures are not required to be performed by a State. If a State chooses to perform the AUPs on the MLR report filed for the year, any future MLR examinations are anticipated to be on a 3-5 year schedule, unless issues are identified (in these circumstances, please consult with HHS). If the State chooses not to perform the procedures, HHS will maintain a similarly timed cycle.
7. Q. How will HHS select Companies that will be subject to HHS audits / reviews each year?
   A. HHS will conduct desk reviews of randomly selected issuers, of which a few could be escalated to field audit. States will be notified if an examination is elevated to a field audit. In future years, HHS may develop a selection methodology for prioritizing issuers for audit.

8. Q. How and when will HHS notify a State or States of the selected company(s) for an MLR Audit?
   A. HHS will contact States prior to sending an issuer a 30 Day Notification Letter regarding the examination. Likewise, States should notify HHS of the companies for which MLR audit procedures will be performed in a given year.

9. Q. When a company is licensed in multiple States or is within a group that contains multiple affiliate health insurers and is selected by HHS for MLR audit, will the MLR rebate calculation in all States be subject to audit?
   A. Yes, any entity selected for an audit by HHS, affiliated or not, will have all (State) filings audited for accuracy in reporting, MLR calculations, timeliness of rebate payments and form filing.

10. Q. How will States coordinate MLR audits on multistate entities or entities within a group consisting of multiple health carriers?
    A. If it is decided to review MLR rebates as part of a scheduled examination and/or to apply the MLR procedures, it is expected that the current Lead State approach will be used to address application of the procedures. The Lead State may work with other impacted States to determine which entities will be included in the MLR review and coordinate resources and apply the procedures. The review may encompass all entities within a group or a subset as appropriate, but should be done at the entity level to be consistent with HHS’s selection process. The review must also encompass the allocation of expenses that impact the MLR calculation within the group of issuers.

11. Q. How should states notify each other that the MLR exam procedures will be performed in conjunction with a financial examination and how will this information be tracked?
    A. In addition to direct communication with other states, a comment should be included in the FEETS notification indicating the intention to conduct an MLR review in conjunction with the exam. Using the terminology of “MLR” or “medical loss ratio” will allow tracking of exams that fit these criteria.

12. Q. Will States be required to share work papers supporting MLR audits with HHS?
    A. HHS will likely accept the findings/report without review of the supporting workpapers. If a State does not apply all the procedures, it may need to demonstrate to HHS why the limiting of procedures was applicable based on work performed before or during the examination (see Q. 3, above). In addition, if there are findings or questions that require additional follow-up by HHS, work paper sharing may be requested. AUP documentation or work performed and findings may be adequate to provide review to HHS, if necessary.

13. Q. If State MLR work papers are requested, can HHS maintain confidentiality?
    A. If HHS asks to review a State’s work papers, we recommend working directly with HHS to enter into a confidentiality agreement that can address State-specific laws as well as HHS’s responsibility for confidentiality. Also, HHS suggests that work papers be marked either “Confidential” or “Trade Secret” at the time that they are shared with HHS. That way, if a
FOIA request is ever made of HHS, information considered a trade secret or confidential commercial or financial information may be eligible for a FOIA Exemption (4) and if it is, will not be disclosed.

14. Q. Must the State reports containing the findings be made public?
   A. 45 CFR 158.403(1) states that the States’ laws must permit public release of the findings of audits of issuers. Therefore, State reports accepted by HHS must also be publically available on the State website, similar to their publication of financial examinations.

15. Q. How will the procedures and related guidance be maintained and updated to account for changes to the law or differences in reporting years?
   A. The procedures provide a general approach for an MLR examination which will be updated as needed to account for any changes to the law or differences in reporting years. These changes will be overseen by the Health Reform Exam (E) Technical Group. If this group is disbanded, a referral can be sent to the Examination Oversight (E) Task Force to determine the appropriate group to ensure continued oversight of the procedures. States should also consult the applicable year’s MLR Form Instructions, which HHS updates to capture any changes in the regulatory requirements, such as new reporting elements or aggregation requirements.