



**BlueCross BlueShield  
of Kansas City**

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By electronic mail

October 12, 2010

Steve Ostlund  
Chair, NAIC PPACA Actuarial Subgroup

**Re: NAIC Recommended Regulation for Uniform Definitions and Standardized Rebate Calculation Methodology for Plan years 2011, 2012 and 2013 Per Section 2718(b) of the Public Health Service Act**

Dear Mr. Ostlund:

Blue Cross and Blue Shield of Kansas City appreciates the opportunity to provide comments as the National Association of Insurance Commissioners (NAIC) finalizes its work on recommendations to the Department of Health and Human Services (HHS) on Section 2718 of the Public Health Service Act (PHSA), dealing with the rebate reporting component of the medical loss ratio (MLR) discussion.

We appreciate the subgroup taking the additional point below into consideration as you finalize the proposed regulation.

**Comments**

**Section 3** - We recommend that the definition of "large group health plan" and "small group health plan" as defined in PHSA Section 2791 (e)(4) be modified to clarify that the definition of small and large employer in the proposed regulation only includes employees who are "enrolled" in the Carrier's Health Plan sponsored by the Employer.

This is important for several reasons.

- 1) **Administrative Efficiency for Carriers and Employers** - Carriers maintain the number of Employees of an Employer that have enrolled in the Carrier's Health Plan. This information is contained in the Carrier's claims system and reports can readily be prepared to consistently ascertain the group size of the employer. In many cases, Carriers do not have an accurate count of the average number total employees that the employer employed the previous year. For the 2011 rebate calculation, Carriers would need to survey employers to determine the average number of employees the employer employed in 2010. Asking hundreds of thousands of employer to provide this information to Carriers annually is costly and employers see little value in participating in this information gathering process. When employers do not respond to an annual survey, Carriers must place the employer group in a category of small group or large group without having the necessary information to do so accurately.

- 2) Increased Administrative Costs - Mailing annual surveys to employers is costly and viewed negatively by employers. Many times Carriers must prepare three or four mailings to obtain the information. In many cases, the information is never provided to the Carrier. The perception by employers is that their premiums are being wasted in collecting information that they view as unnecessary. The expense of gathering this information is not considered an Incurred Claim or an Expense to Improve Quality Health Care, thus this required Carrier activity contributes to increased expenses that could generate more rebates.
  
- 3) Ensure that only those Employees who Participated in the Health Plan are Counted - It is difficult to find a nexus between employees who do not participate in the health plan and the calculation of rebates. Employees who either are not eligible to participate in the Health Plan or elect not to participate in the Health Plan should be excluded from the definition of Small and Large Group Health Plan because no claims were incurred for these employees, no premiums were paid for these employees and no administrative expenses were incurred by the Carrier for these employees. There is absolutely no reason to include these employees in any portion of the medical loss ratio calculation. These employees have no relationship with the Health Plan and they should be excluded from all activities associated with the rebate calculation.
  
- 4) Three Changes of Small and Large Employer Definition could occur over 6 years - Finally, it is possible the definitions of Small and Large Employer for MLR purposes may change three times between 2011 and 2016. For example, for the years 2011, 2012 and 2013, the definition of Small Employer is contained in PHSA and Small Employer is limited to 50 employees. For 2014 and 2015, the definition of Small and Large Employer will be either the Federal Definition in PPACA (100 employees) or the State's definition contained in the State's Rate Reform laws which generally utilizes "50 eligible employees" for the definition of Small Employer. In 2016, the definition changes to 100 employees as the State Option is no longer available. As Carriers have to adjust to these changing definitions, allowing Carriers to rely on the information readily available in their claims system (i.e. "enrolled employees") will reduce confusion and increase consistency in the calculation of which groups are eligible for a rebates among all Carriers even though the number of enrolled employees (i.e. 50 or 100) will change during this time period. The grid below illustrates how the Small Group definition will change over the next 6 years.

Year	Small Group Number of Employees	Type of Employees
2011 2012 2013	Not more than 50	All Employees <sup>1</sup>
2014 2015	State Option=Not more than 50	State Option =Eligible Employees <sup>2</sup>
	Federal Fallback=Not more than 100	Federal Fallback=All Employees <sup>3</sup>
2016 and Later	Not more than 100	All Employees <sup>4</sup>

<sup>1</sup> Unless NAIC Proposed Regulation clarifies Employee means "Enrolled Employee".

<sup>2</sup> Unless Future Rebate Regulation for 2014 and 2015 clarifies Employee means "Enrolled Employee". Also assumes under the State Option, States will use their existing Small Employer definition under State Small Group Rate Reform laws which includes "eligible" and not the definition in PPACA.

<sup>3</sup> Unless Future Rebate Regulation for 2014 and 2015 clarifies Employee means "Enrolled Employee"

<sup>4</sup> Unless Future Rebate Regulation for 2016 clarifies Employee means "Enrolled Employee"

We recommend that the definitions be modified as indicated below.

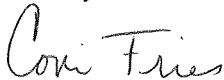
(7) "Large group health plan" means a health plan offered in the large group market as such term is defined in the Public Health Service Act but the term 'employee' in the definition shall include only those employees who are enrolled in the Health Carrier's Health Plan".

(10) "Small group health plan" means a health plan offered in the small group market as such term is defined in the Public Health Service Act but the term 'employee' in the definition shall include only those employees who are enrolled in the Health Carrier's Health Plan".

The Medical Loss Ratio requirements of the ACA encourage Health Plans to be more efficient with Premium dollars and therefore it is important for HHS only to require Health Plans to perform activities that are absolutely necessary to determine the medical loss ratio. Restricting the definition of small employer and large employer to those employees for whom the Health Plan paid claims or for whom the Health Plan incurred expenses will assist all Health Plans in assigning employers to either a large group or small group MLR calculation on a consistent basis while allowing employers to run their businesses without Carriers requesting unnecessary information.

Thank you again for the opportunity to comment, and we look forward to continuing to work with you on this issue.

Sincerely,



Coni Fries  
Deputy General Counsel for Legal, Government Relations and Legislative Affairs

cc: Commissioner Sandy Praeger  
Brian Webb