

Supporting Statement
Medical Loss Ratio Annual Reports, MLR Notices, and Recordkeeping Requirements
(CMS-10418 - OMB Control Number - 0938 -1164)

A. Justification

1. Circumstances Making the Collection of Information Necessary

Section 2718 of the Public Health Services Act (PHS Act) requires a health insurance issuer (issuer) offering group or individual health insurance coverage to submit a report to the Secretary of HHS concerning the amount the issuer spends each year on claims, quality improvement expenses, non-claims costs, Federal and State taxes, licensing and regulatory fees, earned premium, and beginning with the 2014 reporting year, the amounts related to the transitional reinsurance and risk adjustment programs established under sections 1341 and 1343 respectively of the Affordable Care Act. An issuer must provide a rebate to policyholders if the amount it spends in a reporting year on certain costs compared to its premium revenue (excluding Federal and States taxes and licensing and regulatory fees) is below a certain ratio, referred to as the medical loss ratio (MLR). Specifically, section 2718(b) requires an issuer to provide a rebate to each of its policyholders if the MLR for the respective reporting year is less than 85 percent in the large group market or less than 80 percent in the small group or individual market. The implementing regulations for this provision are located in Part 158 to Title 45 of the Code of Federal Regulations.

The following information collections are included in this request:

Annual Report. Under 45 CFR §158.110, issuers are required to submit an annual data report to the Secretary by July 31 of the year following the end of an MLR reporting year. Sections 158.120 through 158.260 set out the data requirements for this report. In addition, under 45 CFR §158.260, each issuer must also submit a report to the Secretary concerning the rebates provided to and on behalf of enrollees. Section 158.260 requires that this report be submitted with the annual report under §158.110. The annual reporting form for the 2019 reporting year was approved by OMB Control Number 0938-1164.

Notices. As specified in 45 CFR §158.240(a), an issuer must provide rebates to enrollees and policyholders on behalf of enrollees when the issuer's MLR does not meet the applicable minimum MLR standard. Section 158.250 requires an issuer to provide information in the form of a rebate notice to policyholders who are owed a rebate and subscribers whose policyholders are owed a rebate. As also provided in 45 CFR §158.250, CMS has developed a standard form for the rebate notice that each issuer must send by September 30 of the year following the reporting year for which policyholders are entitled to a rebate. The standard rebate notices were approved by OMB Control Number 0938-1164. This information collection makes minor revisions to these notices to improve readability and update the references to dates, website addresses, and annual report line numbers. The burden estimate has also been updated based upon the annual reports that were received for the 2021 reporting year.

Recordkeeping. The MLR regulations contain two recordkeeping requirements. Section 158.502 requires an issuer to maintain all documents and other evidence necessary to enable CMS to verify

that the data submitted by the issuer is in compliance with 45 CFR Part 158, including all documents, records, and other evidence used to calculate the MLR and any rebates, and that any rebates owing in accordance with 45 CFR Part 158 are provided. Section 158.501 requires an issuer to preserve and maintain all such documents, records, and other evidence for the MLR reporting year as well as six prior years unless a longer period is required under §158.501. This information collection was also approved by OMB Control Number 0938-1164 and is not being revised at this time. The burden estimate has been updated based upon the annual reports received for the 2021 reporting year.

2. Purpose and Use of Information Collection

The data collection of annual reports provided by an issuer for each State's individual, small group, and large group markets will be used by CMS to ensure that consumers are receiving value for their premium dollar by calculating each issuer's MLR and any rebate payments due for the respective MLR reporting year, as well as verifying the provision of any rebates and rebate notices.

The standardized notices will be used to ensure that consumers are receiving information about the rebate they will be receiving, how their issuer is using health care premium dollars and about the value they are receiving for their premium dollar. The notices will help provide greater transparency to consumers. The recordkeeping requirements will be used by CMS to determine issuers' compliance with the MLR requirements, including compliance with how issuers' experience is to be reported, how their MLR and any rebates owed are to be calculated, distribution of rebates and provision of rebate notices.

3. Use of Improved Information Technology and Burden Reduction

Each issuer will submit its annual report electronically to the Secretary for each respective State and market in which it conducts business. (OMB Control Number 0938-1086.) Information will be collected electronically through CMS' HIOS computer system. This will require registration of the issuer, providing issuer information for the purpose of the collection, and will be the same process as the one used for the previous reporting year. Issuers who have already registered with our MLR module within the HIOS system will not need to register again.

4. Efforts to Identify Duplication and Use of Similar Information

There is no similar information collected related to MLR.

5. Impact on Small Businesses or Other Small Entities

As stated in the Regulatory Impact Analysis of OCIIO-9998-IFC (75 FR 74864 (December 1, 2010)), CMS does not believe that the required submission of annual reports to the Secretary will have a significant impact on a substantial number of small entities. CMS estimates that of the 480 issuers who must report annually to the Secretary in compliance with OCIIO-9998-IFC, there are approximately 83 potentially small entities, or roughly 17 percent, who must comply with the reporting mandate. This estimate may overstate the actual number of small health insurance issuers that would be affected, since it does not include receipts from these companies' other lines of

business and since almost 80 percent of these small companies belong to larger holding groups.

6. Consequences of Collecting the Information Less Frequently

Section 2718 of the PHS Act requires reports to be submitted annually. CMS will use the information reported to assess whether each issuer is in fact providing policyholders with health care value in return for their premium dollars.

Regarding notices, section 2718 of the PHS Act requires issuers to provide rebates annually if they do not meet the applicable MLR standard. Since rebates are provided annually, notices of rebates are required to be provided to policyholders annually in order to inform policyholders about any rebates owing.

7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5

No special circumstances apply to these collections.

8. Comments in Response to the Federal Register Notice/Outside Consultation

CMS published the notice of the revised Medical Loss Ratio (MLR) PRA package in the Federal Register on June 21, 2023 (88 FR 40272). The 60-day comment period closed on August 21, 2023. CMS received two comments on this information collection package. The comments related to the implementation timeline for the revised rebate notices, and did not include changes to the actual instruments. A summary of the comments and CMS responses is attached.

9. Explanation of any Payment/Gift to Respondents

Respondents will not receive any payments or gifts as a condition of complying with these ICRs.

10. Assurance of Confidentiality Provided to Respondents

As required by section 2718(a) of the PHS Act, CMS does intend to publish issuers' annual reports on its internet website. However, no individually identifiable personal health information will be collected and consequently cannot be disclosed.

11. Justification for Sensitive Questions

These ICRs do not contain sensitive questions.

12. Estimates of Annualized Burden Hours (Total Hours and Wages)

The burden estimates associated with the annual report, rebate notice, rebate disbursements, and recordkeeping requirements are discussed below. We have updated the burden estimates based on the MLR experience for the 2021 reporting year. We estimate that each annual filing and rebate disbursement cycle will require on average 59.7 person-days of effort per issuer (approximately 478 burden hours divided by 8-hour work days).

Annual MLR Report

An issuer is required to submit an annual report to the Secretary for each State and market segment in which it issues health insurance coverage. As described in the regulatory impact analysis (RIA) of OCHIO-9998-IFC, the preparation and submission of reports is expected to require a mix of skills. We also estimate that issuers will use a mixture of professional staff, accounting staff, and clerical staff to prepare, review, and issue rebate notices and rebate checks or premium credits, and to perform recordkeeping activities and to upload the report to the HIOS system. The average hourly compensation, including fringe benefits and overhead expenses is \$62.26 for ongoing annual reporting.¹ Previous burden estimates related to these requirements have been updated based on 2021 MLR data submissions.

As set out in 45 CFR §§158.110 and 158.260, the annual report to the Secretary is comprised of several parts: data concerning the amount the premium dollars the issuer spends each year on claims, quality improvement expenses, non-claims costs, Federal and State taxes, licensing and regulatory fees, and the transitional reinsurance and risk adjustment amounts based upon the relevant MLR reporting year; the correlating MLR and rebate (if any) calculation; and data regarding disbursement of rebates based on the prior MLR reporting year.

Currently, 480 issuers are expected to file a total of 1,677 annual reports with the Secretary.² Of these 480 issuers, 63 issuers offer student health coverage in addition to group or individual market coverage and 4 issuers only offer student health insurance coverage. As shown in Table 1 below, for the 413 issuers that offer coverage in the group and/or individual markets only, it is estimated that each issuer will, on average, incur a burden of approximately 222.6 hours (and an equivalent cost of approximately \$13,859) annually and, because of operating in several States and markets, will submit on average 3.5 reports a year. The 63 issuers that are expected to submit data on student health insurance coverage in addition to data on individual and/or group market offerings will incur additional reporting burden of 5 hours each, for a total of 315 hours (and an equivalent cost of approximately \$14,170) annually. In addition, there are 4 issuers that offer coverage exclusively in the student health insurance market. It is estimated that each issuer will incur an annual reporting burden of 10 hours (an equivalent cost of \$622).

¹ Wage Estimate: to derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2021 National Occupational Employment and Wage Estimates for all salary estimates (http://www.bls.gov/oes/current/oes_nat.htm). In this regard, the wage data on the following pages includes the cost of fringe benefits and the adjusted hourly wage.

² These numbers are based upon the actual MLR reports that issuers filed for the 2021 MLR reporting year. A report includes data for multiple markets (individual, small group, large group) for an issuer in a State. An issuer may combine multiple reports in one filing.

Table 1: Burden and Cost Estimates for Annual Report

Form	Type of Respondent	Number of Respondents	Average Number of Reports per Respondent	Frequency	Estimated Burden Hours per Respondent	Wage per Hour (incl. fringe)	Burden Cost Per Respondent	Total Estimated Burden Hours
Annual Report for issuers not offering student health insurance coverage	Private Company	413	3.49	1	222.60	\$62.26	\$13,859.34	91,935
Annual Report for issuers offering student health insurance coverage in addition to other coverage	Private Company	63	3.49	1	227.60	\$62.26	\$14,170.65	14,339
Annual Report for issuers offering student health insurance coverage only	Private Company	4	1.00	1	10.00	\$62.26	\$622.60	40

Table 2: Burden and Cost Estimates for Notice of Rebates and Disbursement of Checks

Type of Respondent and Forms	Number of Respondents	Average Number of Notices or Checks per Respondent	Estimated Burden Hours per Rebate Cycle	Wage per Hour (incl. fringe)	Total Estimated Burden Cost for Notices or Checks Per Respondent	Total Estimated Burden Hours (Ongoing)
Private Company for Notice of rebates to Subscribers and Policyholders	114	36,845	340.56	\$42.12	\$27,191	38,824
Private Company for Disbursement of checks	62	16,033	400.83	\$52.19	\$21,720	24,851

Recordkeeping Requirements

Each issuer is also obligated to maintain all documents, records and other evidence that supports the data submitted by the issuer in its annual report(s) to the Secretary.

Each of the 480 issuers expected to submit an annual report to the Secretary must maintain the

supporting documentation for seven years. We estimate that each issuer will spend approximately \$12 a year (Table 3) in maintaining the supporting documents for the respective MLR reporting year.

Table 3: Burden and Cost Estimates for Retention of Records

Forms (if necessary)	Type of Respondent	Number of Respondents	Average Number of Reports per Respondent	Frequency	Estimated Burden Hours per Respondent (Ongoing)	Total Estimated Burden Hours (Ongoing)	Wage per Hour (including fringe)	Burden Cost for Annual Retention of Records Per Respondent
Retention of Records	Private Company	480	3.49	1	0.21	101.12	\$58.98	\$12.43

Table 4: Total Burden and Cost Estimates

Form	Type of Respondent	Number of Respondents	Average Number per Respondent	Frequency	Estimated Burden Hours per Respondent	Total Estimated Burden Hours
Annual Report	Private Company	480	3.49	1	221.49	106,314.02
Notice of Rebates	Private Company	114	36,845.33	1	340.56	38,824.40
Disbursement of Checks	Private Company	62	16,033.05	1	400.83	24,851.34
Retention of Records	Private Company	480	3.49	1	0.21	101.12
Total		480			354.36	170,090.88

13. Capital Costs

Notice of Rebate and disbursement of rebate checks

The regulation also requires each issuer that does not meet or exceed the minimum MLR standard to provide rebates to its policyholders as well as notice of such rebates to policyholders and to subscribers of group policyholders.

It is estimated that 114 issuers in the individual and group markets will owe rebates and each issuer will provide rebate notices to approximately 36,845 policyholders and subscribers on average (Table 2). We estimate that approximately 20,393 notices will be sent per issuer by first class U.S. mail. The cost for sending notices via U.S. mail for each issuer is estimated to be roughly \$14,343 (\$42.12 per hour x 340.56 burden hours) in labor costs and approximately \$12,847 (20,393 notices x \$0.63 mailing and supply costs per notice) in mailing costs, for a total annual cost of approximately \$27,191 (Table 2).

It is estimated that approximately 62 issuers in the individual market will disburse rebates in some

form to subscribers by September 30 of the year following the end of the MLR reporting year, whether by premium credit, check, or refund via credit or debit card (Table 2). Assuming that the issuers will disburse 50% of the rebates in the form of an actual check, we project that each of these 62 issuers will issue approximately 16,033 checks on average. Each issuer is estimated to expend approximately \$20,918 in labor costs and an additional \$801 in processing costs, for a total ongoing cost of approximately \$21,720 a year (Table 2). The remaining rebates will be issued through premium credit or refunds via credit or debit card. Costs of paying rebates through one-time electronic reimbursement are expected to be negligible. It is estimated that approximately 76 issuers in the group market (including some of the issuers that also owe rebates in the individual market) will provide rebates to policyholders for disbursement to subscribers. We expect that the rebates to policyholders will be issued electronically and the related costs will be negligible.

14. Annualized Cost to Federal Government

Table 5: Estimate of Cost to Federal Government

Type Federal Employee Support	Total Burden Hours per Reviewer	Total Reviewers	Hourly Wage Rate (GS 14 equivalent) – (includes fringe)	Total Federal Government Costs
Data Analysis	3 hours per data submission for each Annual filing (480 filers once per year – 1,440 hours) ⁵	1	\$79.85	\$114.978

Salaries are based on a 14 Grade/Step 1 in the Washington DC area and include benefits.

15. Explanation for Program Changes or Adjustments

Based upon CMS' experience in the MLR data collection and evaluation process, CMS is updating its annual burden hour estimates to reflect the actual numbers of submissions, rebates and rebate notices. The 2022 Annual Report reflects two new lines that will only be used by roughly 5 percent of issuers and a number of routine instruction updates and clarifications of the existing requirements that, together, are expected to have a negligible impact on the burden hours.

In 2022, it is expected that issuers will submit fewer reports on average, and on average send fewer notices and rebate checks to policyholders and subscribers, which will overall decrease burden on issuers. It is estimated that there will be a net decrease in total burden from 232,427 to 170,091.

16. Plans for Tabulation and Publication and Project Time Schedule

The annual report of MLR data for each reporting year is due to the Secretary by July 31 of the following year.

17. Reason(s) Display of OMB Expiration Date is Inappropriate

OMB expiration date and control number will be displayed on the front page of every instrument.

⁵ A data submission includes filings for all States by a single issuer.