



HEALTH CARE REFORM update



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Summary of Rating Reforms

On March 23, 2010, President Obama signed into law the “Patient Protection and Affordable Care Act” (PPACA). A reconciliation bill making changes to the Act was signed by the President on March 30, 2010. PPACA as amended by the reconciliation bill is collectively referred to as the Act in this summary. Various regulations have been published since the enactment of PPACA that impact rates including the Interim Final Regulation implementing the Medical Loss Ratio (MLR) requirements (published on December 1, 2010) and the Final Rule on Rate Increase Disclosure and Review (published on May 23, 2011). This summary provides an overview of the rating reforms contained in the Act and regulations.

Summary

The Act and regulations establish new rate review procedures, rating requirements, pooling requirements, medical loss ratio definitions and reporting, and rebates when medical loss ratio requirements are not met.

Scope

Applicable to health insurance issuers in the individual and group (large and small) markets as further described in this fact sheet.

Definitions

Large employer - when used in connection with a group health plan, means an employer who employed an average of at least 101 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year (PPACA § 1304(b)).

Small employer - when used in connection with a group health plan, means an employer who employed an average of at least one but not more than 100 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year. States may choose to define small employers as having at least one but not more than 50 employees until January 1, 2016 (PPACA § 1304(b)).

In Kansas and Missouri, small group¹ is defined as an employer who employs between 2 and 50 eligible employees. An "eligible employee" for a Missouri small employer² and a Kansas small employer³ is defined as

¹ The exact language of section 2791(e)(4) of the PHS Act, 42 U.S.C. § 300gg-91(e)(4), defines "small employer" as follows: ". . . in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year."



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an employee who works on a full-time basis, with a normal workweek of 30 or more hours. (Please note: In the 2-50 market, Missouri requires that all employees who work at least 30 hours per week be considered “eligible employees”).

Rate Review and Transparency of Rates

On or after September 1, 2011, the threshold for review will be whether the average increase for all enrollees weighted by premium volume meets or exceeds 10 percent. A single rate increase that by itself falls below the 10 percent threshold must be aggregated with rate increases implemented during the 12-month period in order to determine whether it is subject to review. A state’s specific threshold percentage may change as determined by HHS and published in the Federal Register by June 1st of each year.

Beginning in 2014, HHS will monitor increases both within and outside of the Exchange. States are required to consider any excess premium increases outside the Exchange when determining whether large groups will be allowed to purchase through the Exchange in 2017 (PPACA § 1003 adding § 2794(b)(2) to the PHSA).

- \$250 million in grant funding is available for States for 2010-2014 fiscal years to implement the rate review process above. In order to receive a grant, OHIC will be required to report trends in rate increases and make recommendations regarding whether a particular carrier should be permitted to participate in an Exchange. The grant is no less than \$1 million and no more than \$5 million per State per year. (PPACA § 1003 adding § 2794(c) to the PHSA)
- In addition, the grant funds will facilitate the establishment of medical reimbursement data centers (“Centers”) at academic or other nonprofit entities to collect reimbursement information from insurers, analyze and organize the information, and make it available to insurers, providers, researchers, policy makers and the general public. Centers may not compel an insurer to provide data (PPACA § 10101 adding § 2794(c)(1)(C) and (d) to the PHSA).

² A "Small Employer" (in connection with a group health plan with respect to both a calendar year and a plan year) is defined as a person, firm, corporation, partnership, association or political subdivision that is actively engaged in business, and employed an average of at least 2 but no more than 50 eligible employees on business days during the preceding calendar year and that employees at least 2 employees on the first day of the plan year.

³ A “Small Employer” is defined as a person, firm, corporation, partnership or association actively engaged in business whose total employed work force consisted of, on at least 50% of its working days during the preceding calendar year, 2 and no more than 50 eligible employees the majority of whom are employed in Kansas.



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Rating and Pooling

- **Rating variations (Individual and Small Group).**

For plan years beginning on or after January 1, 2014, an insurer in the individual and small group market may only vary rates based upon:

- Whether coverage is individual or family;
 - Rating area (as established by the State in conjunction with HHS);
 - Age, but rates may not vary by more than three to one for adults (HHS, in consultation with NAIC will establish permissible age bands); and
 - Tobacco use, but rates may not vary by more than 1.5 to 1, applied based on the portion of the premium attributable to each family member covered (PPACA §1201 adding a new §2701 to the PHSA).
- **Large group.** States have the option beginning in 2017, to allow large employers to purchase through the Exchange (See Blue KC's *Summary of Provision on Exchanges* fact sheet for more information). If the State permits a large employer to purchase through the Exchange, then the rating rules above apply to all large groups (PPACA § 1312 (f)(2)(B)).
 - **Risk pools.** The Act establishes separate pools for the individual and small group markets. All individuals that purchase coverage from the insurer in the individual market (other than grandfathered plans), whether or not enrolled through the Exchange, are part of a single risk pool for determining individual market rates. Similarly, all enrollees in plans offered by the insurer in the small group market (other than grandfathered plans), whether or not enrolled through the Exchange, are part of a single risk pool for determining small group rates. States have the option to combine the individual and small group markets (PPACA §1312(c)).
 - **Uniformity across carriers.** States are required to apply rating reforms uniformly to all insurers within the market to which the reforms apply (PPACA § 1252).

Medical Loss Ratio Reporting and Rebates

- **Medical Loss Ratio Reporting.** For plan years beginning on or after September 23, 2010, health insurance issuers in both the individual and group (large and small) markets must report medical loss ratio data to HHS. Such report shall include the percentage of total premium revenue, after accounting for money received under risk adjustment and risk corridors and payments under reinsurance programs, that was expended for:

- Reimbursement for clinical services;
- Activities that improve healthcare quality; and
- All other non-claim costs, with an explanation of the nature of such costs, excluding state and federal taxes and licensing fees.

On December 1, 2010, the [medical loss ratio](#) “MLR” regulations were issued. They established uniform definitions for these terms and standardized methodologies for calculating medical loss ratio.

- **Rebates.** Beginning with 2011 MLRs, insurers are required to provide an annual rebate to each enrollee, on a pro rata basis, if the medical loss ratio is below 85% for large groups or below 80% for individual or small



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group coverage. The rebate initially is calculated as the difference between the amount the medical loss ratio is below the required medical loss ratio and the total amount of premium revenue. Beginning in 2014, the calculation of the rebate is based on the average over the prior three plan years.

States may adjust the medical loss ratio for the individual market to account for volatility in the individual market as the result of Exchanges being established.

The medical loss ratio reporting and rebate requirements apply to all insured plans, including grandfathered plans.

Guaranteed Availability and Renewability

- **Availability.** For plan years beginning on or after January 1, 2014, insurers offering coverage in the individual and group (large and small) markets must accept every employer and every individual that applies for coverage. An insurer may restrict enrollment to open and/or special enrollment periods. HHS will issue regulations regarding enrollment periods (PPACA §§ 1201 and 1562(c)(8)(D)-(E) amending § 2702 of the PHSA).
- **Renewability.** For plan years beginning on or after January 1, 2014, insurers offering coverage in the individual and group (large and small) markets must renew or continue coverage in force at the option of the group or individual (PPACA § 1201 amending § 2703 of the PHSA). This does not appear to modify existing rules that permit insurers to withdraw products from the market.

Effect on Kansas and Missouri Law

It appears that provisions of Kansas and Missouri laws that are stricter than those in PPACA may continue in effect (except where expressly preempted within the Exchange). Each State will need to make a determination of whether to modify the small group market to extend to groups up to 100 before 2016, but must do so at that time.

Effective Date

The effective dates for the rating reform provisions vary and are identified throughout this document.

References

PPACA: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf

Reconciliation: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4872pcs.txt.pdf

Interim Final Regulation on Medical Loss Ratio: <http://edocket.access.gpo.gov/2010/pdf/2010-29596.pdf>

Final Regulation on Rate Increase Disclosure and Review: <http://www.gpo.gov/fdsys/pkg/FR-2011-05-23/pdf/2011-12631.pdf>

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